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ABSTRACT

Results of a two-year research project (1982-84) on Legislative and Representative Ethics are presented in this report, which analyzes the basic principles of legislative ethics, discusses the special dilemmas and obligations of legislators, and offers conclusions about future steps that could be taken to enhance public discussion and to reinforce the incentives leading to ethical conduct. Following an executive summary, the first of five sections deals with the importance of legislative ethics, with subsections on legislative authority and the public trust, an increasing lack of public confidence in elected representatives, movement toward a more comprehensive and constructive dialogue in legislative ethics, ethics and politics, and new perspectives and aims. The second section, "The Ethical Challenge of Legislative Service," discusses legislatures and legislators in a democratic society, traditional norms of legislative ethics, the rise of the entrepreneurial legislator, and the limits of recent ethics reform. The practice of representation, principles of legislative ethics, and ethical dilemmas are treated in section III. Section IV, "Legislatures and Legislative Ethics," examines the moral ecology of legislatures and legislative ethics codes and enforcement. The final section outlines future steps that could be taken to enhance autonomy, accountability, and responsibility and suggests that the need for enhanced public understanding of legislative ethics is one component of the more general problem of responsible citizenship and "democratic literacy." (LH)

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The Ethics of Legislative Life

A REPORT BY THE HASTINGS CENTER

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The Hastings Center was established in 1969 to address the ethical problems of rapid developments in medicine, biology and the behavioral sciences. Increasingly of late, in addition to those interests it has been concerned with problems of professional ethics and with the teaching of ethics in undergraduate and professional schools. Located in Hastings-on-Hudson, New York, The Hastings Center carries out research in such areas as death and dying, genetic counseling and engineering, behavior control, health policy, public policy, the foundations of ethics, and professional ethics.

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Preface

What special moral obligations are created when one is elected to "represent" others in a democracy? Where do these obligations come from? What fundamental ethical principles underlie them? What are realistic standards of conduct for legislators? Which factors may legitimately influence a legislator's decision making, and which unethically compromise his or her autonomous judgment? What must legislators do to remain properly accountable? What responsibilities should legislators assume for the proper functioning of legislatures and the legislative process? What counts as a conflict of interest, how can such conflicts be avoided, and how should they be handled when they arise? What restrictions, if any, should be placed on the private financial transactions of legislators? To what extent should legislative assemblies internally pass judgment on the ethical conduct of their members, and to what extent should such judgments be left to the voters? Where does "ethics" end and "politics" begin?

In the 1970s considerable public attention was focused on several of these questions. In the wake of serious scandals, legislators on both the federal and the state levels attempted to define more precise ethical standards of conduct and to devise procedures for enforcing them. By the end of the decade, in both the U.S. Senate and the House of Representatives, and in most state legislatures, new or revised codes of ethics had been written and special ethics committees or commissions had been created.

Many of the ethical questions discussed in the process of undertaking these reforms are not new. Americans have always understood that the men and women chosen to represent their fellow citizens in the legislative process have special obligations, flowing from the special powers entrusted to them. Over time, however, our shared understanding of those obligations has developed and changed to adapt to changing political, institutional, and cultural circumstances. The reformers of the 1970s attempted both to reaffirm traditional norms and to add to them by placing a special emphasis on contemporary ethical issues arising from financial transactions and conflicts of interest.

Even so, one cannot say that the questions of legislative ethics have been answered, nor indeed that they have always been carefully posed and thoroughly analyzed. In the 1980s and beyond we must continue to explore legislative ethics—to refine official standards of conduct and to clarify the basic ethical principles upon which such standards rest. Too often in the past, attention to legislative ethics has been sporadic, arising in response to particular allegations or scandals and declining after individual cases have been resolved. A steadier, more solid approach is needed. This report is intended to stimulate that ongoing exploration and to guide it toward some new and expanded horizons.

Since its founding in 1969, The Hastings Center has worked to shed light on the ethical and social issues arising out of recent developments in medicine, the life sciences, and the professions. Its work has ranged over ethical problems of death and dying, population control, genetic counseling and engineering, health policy, the teaching of ethics in higher education, and applied and professional ethics. In these areas and others, the Center has sought to bring humanists, natural and social scientists, professional practitioners, and public officials together for dialogue and interdisciplinary study.

The Center first became involved in the area of legislative ethics in the summer of 1980 when it was asked to consult with the staff of the U.S. Senate Select Committee on Ethics on possible revisions in the Senate Code of Official Conduct.[1] At that time we began to learn something about how ethical issues are perceived by legislators and others directly involved in the legislative process. We were surprised, however, to discover how little attention the subject of legislative ethics had received from philosophers, social scientists, and other scholars. The theoretical foundations of legislative ethics had not been examined carefully, and no attempts had been made to investigate—beyond financial dealings and conflict of interest issues—the broader range of the more subtle ethical dilemmas legislators face.

In the fall of 1981, the Center began a two-and-one-half-year research project on Legislative and Representative Ethics, supported by a grant from the Ford Foundation. That project gave us the opportunity to take stock of the current "state of the art" in legislative ethics in both Congress and the state legislatures. Discussions with members of the Senate and House ethics committees and individuals involved with ethics commissions in various states called our attention to the controversies surrounding particular regulations and the difficulties encountered in enforcing them. In addition, we studied the important political and institutional changes that have altered the environment within which contemporary legislators act, make decisions, and, so to speak, conduct the practice of political representation.

In discussing these changes—the declining influence of political parties, the growing influence of Political Action Committees

(PACs), changes in the internal distribution of power and influence in legislatures, and so on—we sought to focus attention on their specifically ethical implications. Our concern was not so much whether these changes are desirable or undesirable in and of themselves, but rather to what extent and in what ways they make it easier or more difficult for legislators to fulfill their ethical obligations. Finally, we attempted to reflect on the moral meaning of political representation in a democratic society. That meant we had to define the basic ethical principles governing legislative conduct that follow from the role legislators can and should play in our political system and from the democratic ends they should serve.

From 1982 to 1984 we surveyed the extensive literature on theories of representation and legislative studies, held six extended conferences, conducted interviews, and commissioned more than twenty papers. The papers explored the history and theory of legislative ethics, current trends in the electoral system and the institutional organization of the legislative process, issues pertaining to the scope and enforcement of legislative ethics codes, the similarities and differences in ethical issues arising at the federal and the state level, and the connections between legislative ethics and other fields of professional ethics. Our meetings produced lively and sometimes heated discussions. They brought out clearly the tensions that sometimes exist between political and ethical perspectives. They also brought out the fact—too little noticed and too often unappreciated—that legislative life is a morally rich and most complex endeavor. Its richness and complexity are felt, but not always clearly understood, by legislators themselves, and are rarely perceived by ordinary citizens who attend only to media coverage of periodic scandals.

The report that follows is an outcome of the Legislative and Representative Ethics Project. It contains our analysis of the basic principles of legislative ethics, discusses the special dilemmas and obligations of legislators, and offers our conclusions about future steps that could be taken to enhance public discussion and to reinforce the incentives leading to ethical conduct. It also presents our conclusions on the major questions we believe should be confronted by federal and state legislators, their staffs, educators, journalists, and indeed all citizens as they reflect upon the ethical duties and dilemmas arising in legislative service and democratic representation in our Republic.

We did not try to achieve a tight, precise consensus among ourselves, only a general agreement; no member of our project would necessarily agree with every sentence in this report. We felt we neither could nor should lay out a number of hard-and-fast ethics regulations or prescriptions for legislative reform. But we did study the issues, talked and argued at length for over two years, and came to a number of general conclusions. It is those conclusions, and—we hope—an enriched understanding of legislative ethics, that we present here.

This report draws upon many sources. Perhaps the most important among them are the various papers and studies commissioned for the project. They will appear in a companion volume, Bruce Jennings and Daniel Callahan, eds., *Representation and Responsibility: Exploring Legislative Ethics* (New York: Plenum Press, forthcoming).

We would like to thank the Ford Foundation for the support that allowed us to conduct this study. And we would like to thank most heartily as well those who attended our meetings, wrote papers, and served as critics and commentators on the papers written by others. None of them is to be held responsible for any errors of fact or judgment that may appear in this report. But we hope they will be given credit for whatever insight the report may contain.

A special debt of gratitude is owed to Vanessa Merton, John D. Saxon, Robert M. Stern, Dennis F. Thompson, and J. Jackson Walter for their special services as our editorial committee in the preparation of this report. Professor Martin Benjamin of Michigan State University provided a most helpful set of comments on an earlier draft.

Mary Gualandi and Eva Mannheimer deserve special praise for their skillful and good-natured assistance in typing and retyping the manuscript of this report.

Finally, we were deeply saddened by the death of C. Braxton Valentine, Jr., Staff Director of the Senate Select Committee on Ethics and one of our original collaborators on this project. Brack Valentine was a devoted public servant and a consummate gentleman. Whatever contribution we can make to the promotion of legislative ethics will be a fitting gift to his memory.

The following list of contributors to the project includes those who were permanent members of the group that carried out this study and are responsible for this report, those who wrote papers, and those who took part in at least one of the meetings we held.

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Executive Summary

Beginning in 1981, The Hastings Center conducted a research project on Legislative and Representative Ethics. Based on Hastings Center staff research and the work of an interdisciplinary research group of distinguished scholars and public officials, the purposes of this project were: (1) to develop a comprehensive new perspective on the ethics of legislative life; (2) to examine the theoretical foundations and principles of legislative ethics; (3) to assess the ethics reforms instituted at the federal and state level in the post-Watergate era; and (4) to suggest new ways to encourage ethical reflection and conduct by elected representatives. This report presents the results of the Legislative and Representative Ethics Project.

I. The Importance of Legislative Ethics Today

- Legislators as individuals and legislatures as institutions play an essential role in our democracy and carry the burden of a solemn public trust. The ethical issues legislators face are diverse. They are not limited merely to matters of financial propriety and conflicts of interest, but are present in nearly all facets of legislative and representational activity.

- Ethics reforms, such as new codes of conduct and financial disclosure requirements, undertaken in response to these scandals and periodically heightened media attention to ethics, have helped to deter specific abuses but have not enhanced public understanding of legislative ethics or fully restored public confidence.

- In the years ahead there must be a richer, more concerted public dialogue on legislative ethics. In this dialogue our attention should not be entirely focused on particular abuses or scandals. It should turn instead to the fundamental ethical principles underlying democratic representation and to the recent institutional and systemic developments in our political system that make it difficult for legislators to fulfill the basic ethical obligations of their role.

II. The Ethical Challenge of Legislative Service

- Legislators have special obligations that are often more restrictive and demanding than the general moral obligations of private life.

- The essence of a legislator's public trust involves the autonomous, accountable, and responsible use of power and influence in the legislative and representational process. Legislators must be both public *servants* and public *leaders*. They must be able to bargain effectively on behalf of their constituents' interests in the legislative process without losing sight of the broader responsibilities and purposes that process is designed to serve.

- During the course of American history the norms of legislative ethics have expanded and changed as government in general and legislatures in particular have come to play an increasingly significant role in society. For the most part, legislatures have relied on informal mores and electoral sanction to deter unethical conduct, as defined by the prevailing standards of the day.

- In the last few years organizational reforms within legislatures and structural changes in the broader political system have undermined the traditional, informal processes of ethical guidance. These changes have led to a marked new style of political entrepreneurialism among legislators. This creates a new fluidity in legislative life and considerable new uncertainty about the proper ethical standards that ought to govern legislative conduct.

- Recent ethics reforms have been based on two strategies: public disclosure and explicit regulation and prohibition. The disclosure strategy has aimed to enhance democratic accountability and to provide constituents with the information they need to determine whether their representative's conduct is ethically acceptable. The regulatory strategy has focused on those areas where a clear consensus exists concerning the ethical impropriety of specific practices.

- On the whole, these reforms have been well-conceived and valuable. However, they suffer from two important shortcomings:

  —The underlying principles and rationales of these reforms have not been adequately clarified or explained to legislators and the public. This has undermined support for them, as inevitable problems with practical implementation and interpretation have arisen.

—These reforms focus principally on conflict of interest and the use of office for personal financial gain. As such, they deal with important issues but do not address the full range of ethical issues legislators face.

III. Ethical Principles and Legislative Life

- Legislative representatives are neither simply "delegates" nor "trustees." Legislative roles and styles are and should be diverse and multifaceted. Representation and the legislative process are collective, cooperative endeavors, and legislative ethics does not prescribe a single style of representation.

- The ethical obligations of legislators are rooted in three basic principles of legislative ethics: autonomy, accountability, and responsibility.

—The *principle of autonomy* holds that legislators have an obligation to deliberate and decide, free from improper influence. Improper influences are those that draw legislators' use of the authority and resources of their office away from the public ends—the representation of constituent interests and the promotion of the public interest—that these offices were created to serve in the first place.

—The *principle of accountability* holds that legislators have an obligation to provide constituents with the information and understanding they require in order to exercise responsible democratic citizenship. When they are in doubt about what course of action to follow, the principle of accountability recommends that legislators ask themselves: "Could I publicly justify—give good reasons for—doing this if my constituents were fully informed about and fully understood what I had done?" Simply asking: "Could I get away with this if it were revealed?" is not sufficient.

—The *principle of responsibility* holds that legislators have an obligation to contribute to the effective institutional functioning of the democratic legislative process. Legislators must strike a delicate balance between accommodating themselves to the existing institutional and procedural arrangements of their chamber, and pressing for organizational change through public criticism and institutional leadership.

IV. Legislatures and Legislative Ethics

- At the moment, legislatures throughout the country are undergoing a process of transition. Legislatures have an important opportunity to provide their members with institutional incentives and guidance that are based on a new and better understanding of legislative ethics.

  —Senior legislators and legislative leaders should be conscious of their position as ethical role models for other legislators.

  —Ethics committees and commissions should maintain a nonpartisan approach to matters under their jurisdiction.

- Legislative ethics codes should be revised to broaden their scope, to articulate the philosophical foundations upon which they rest, and to include both positive ideals and negative prohibitions. Codes are too often seen as merely negative elements in legislative life—rules and restrictions that exist because legislators are unable to discipline and direct themselves. They can and should have more positive, supportive functions:

  —Codes should express the legislature's own sense of itself as an ethical organization.

  —Codes should serve as a public declaration of the ethical traditions and values members are dedicated to serve. As such, they can supply a common point of reference for public discussion and facilitate the formation of a public consensus on the fundamental norms of legislative ethics.

V. Legislative Ethics: Taking the Next Steps

- Enhancing Autonomy

  —Legislators should remain alert to their obligation to be well informed about policy issues and the substantive merits of legislative proposals. They should resist influences and pressures that may bias this independent judgment or cloud their perception of the best interests of their constituents.

  —Legislatures should provide the institutional resources and professional staff support legislators need to preserve their well-informed judgment and to resist undue pressure. Lobbying activities should be carefully regulated to promote a free exchange of views but to prevent unethical or abusive practices.

—Those directly involved in the legislative process should recognize the importance of the legislator's ethical duty to make autonomous judgments and the ethical importance of their own role in supporting that duty.

—Lobbyists and those involved with PACs and other campaign finance groups should support responsible controls and regulations designed to prevent abusive practices. They should collectively sanction or publicly disassociate themselves from individuals and groups that violate the norms of ethical lobbying.

—Those influencing public opinion, including journalists and others well informed about the inner workings of the legislative process, should strive to promote public understanding of and respect for the duty of autonomy.

- Enhancing Accountability

—Legislators should strive to maintain a dialogue with constituents. They should remain open to constructive feedback from all constituents and exercise educational leadership in helping constituents understand issues.

—Legislatures should seek new ways to enhance public understanding of the legislative process and the ethical standards they endorse as institutions.

—Those seeking to influence legislation should provide accurate, detailed, and balanced information about the activity of legislators to the members of groups they represent.

—Journalists should strive to ensure that their coverage of legislative activity does in fact contribute to the enhancement of their readers' and viewers' capacity to exercise their rights as citizens.

—Journalists should expand their coverage of legislative ethics issues to convey the complexity of ethical dilemmas in legislative life. Media coverage should not focus exclusively on scandals or extreme cases of unethical conduct. The public needs to be informed about ethically right decisions as well as ethically wrong ones.

- Enhancing Responsibility

—Legislators should resist the temptation to run for the legislature by running against the legislature.

—Those seeking to influence the legislative process should recognize their broader responsibility to the public interest in sound, efficient legislative policy making. They should not obstruct legislators in their efforts to enhance the legislature's institutional capacity to exercise its constitutional functions in appropriations, oversight, and other areas.

—Those influencing public opinion should promote better public understanding of the institutional functioning of legislatures. They should nurture public tolerance of the healthy checks and balances of the legislative process, but they should also help to create public support for legislative modernization and reform.

I. The Importance of Legislative Ethics Today

Legislative Authority and the Public Trust

Legislators must embody our highest social ideals without losing touch with hard reality.

The American constitutional system places a strong emphasis on the legislative branch of government. Legislatures as institutions and legislators as individuals occupy an essential position in our democracy and carry the burden of a solemn public trust. In attempting to fulfill that trust, legislators play many different roles. Their tasks range from careful study of exceedingly complex policy questions to helping individual constituents with their personal problems. The legislator is by turns a statesman and a political broker, a political party member and candidate for reelection, an ombudsman, a fact finder, a watchdog, a searcher for practical means to just ends, and an arbiter of conflicting values. Legislators must embody our highest social ideals and aspirations without losing touch with hard reality. They must descend into the trenches of partisan dealing and in-fighting without losing their integrity and perspective.

It is not surprising that moral issues frequently arise in legislative life. Legislative representation is an integral part of a democratic political system and hence serves the basic moral good of a free and open society. Legislators are entrusted with significant power—the decisions they make regularly affect the lives and well-being of millions of people in this country and throughout the world. Their use of this power, and their respect for the public trust that stands behind it, are facts with moral implications that must not be ignored.

But what precisely are the *ethical* questions that legislators face? No simple list of issues—even a very long one—can answer this question. Ethical issues do not arise in the same way in all situations, and they do not come with clear labels attached.[2] The ethical issues most often discussed in the last few years have grown out of particular scandals in the 1970s and early 1980s and involve instances of financial misconduct and the use of office for purely personal benefit. But, as we shall argue, these cases do not exhaust the full range of ethical issues in legislative life. In addition to clear-cut violations of existing statutes or ethics codes, there is a wide variety of legislative decisions that involve important moral choices where the right course of action is not at all clear. Perhaps the best way, then, to provide an initial orientation to the range of concrete decision making situations that we will be including under the rubric of legislative ethics in this report is to look at a few simple vignettes:

- A legislator is approached by a spokesman for a foreign investment consortium and asked to support certain amendments to a pending trade bill in return for a substantial cash payment.
- A legislator is approached by a spokesman of a foreign investment consortium and asked to support certain amendments to a pending trade bill. After giving a persuasive argument for the merits of these amendments, the lobbyist mentions that he would be able to arrange a favorable loan from private sources for the legislator's son who at that time is seeking to take advantage of a potentially lucrative investment opportunity.
- At a fund-raising dinner for a colleague, a legislator approaches the director of a Political Action Committee affiliated with a large corporation directly affected by a bill pending before a subcommittee the legislator chairs. He solicits a campaign contribution and makes it clear that his handling of that bill will depend upon receipt of the contribution.
- A legislator is engaged in a very close campaign for reelection. His funds are depleted and he needs to raise money for a final week of television advertising. He receives a call from a lobbyist who implies that he could arrange a substantial contribution from a Political Action Committee affiliated with a large corporation directly affected by a bill pending before a subcommittee the legislator chairs. No quid pro quo is mentioned. The legislator plans to vote against the bill himself since he believes it is technically flawed and would be detrimental to a number of small businesses in his district. He can, however, expedite the subcommittee vote and he believes that the bill will pass if he does so. If he does not receive the contribution, he believes he will lose the election.
- In the state assembly where a legislator serves, an abstention is equivalent to a no vote. A bill is pending that he considers detrimental to the state economy but it would be highly advantageous to trade union members in his district. Union support was crucial to his last election. The legislator believes that the significance of his abstention would not be understood by his constitu-

ents, but that a direct no vote would cost him political support in the future.

- A junior legislator is aware of the fact that the senior member from his state has a growing alcohol problem. The seriousness of this problem is not yet apparent to others, but he knows that his colleague has made a number of subtle errors in committee proceedings that have affected important pieces of legislation. The majority leader has asked the legislator for his opinion concerning his colleague's condition.

These hypothetical situations illustrate a range of choices legislators have to make, choices which to varying degrees and in varying ways involve a moral dimension. In some of these cases existing laws and ethics codes would provide relatively clear guidance; in others the application of existing ethical norms is highly uncertain. All but the clearest cases—such as the first—involve both ethical and political considerations. Real-life cases, of course, can be even more complex than these vignettes suggest; motives are often unclear, outcomes uncertain. These vignettes only begin to scratch the surface of the ethics of legislative life.

When a legislator's ethical conduct is called into question, we find it difficult to state precisely why a given action is wrong.

Ethical quandaries for legislators are often exacerbated by public expectations and the pressures constituents exert. Americans expect much from their legislators. Our demands, filtered and amplified through an aggressive media and a thick network of special interest groups, are urgent and shrill because our needs are great. But those demands are not always balanced by a reasonable understanding of the true capacities and limits of the legislative process. Our expectations, conditioned by long-standing normative and ethical traditions, are exacting—as they should be, for legislators have considerable power to benefit or to harm their fellow citizens, and that power entails the most serious obligations and responsibilities. But those expectations are not always based on clear or cogent standards of judgment. When a legislator's ethical conduct is called into question, we find it difficult to state precisely why a given action is wrong. Consequently, because we do not always understand the precise nature and source of the ethical dilemmas legislators face, we sometimes expect too much of our legislators and other times too little. For their part, legislators also do not always clearly perceive the ethical significance of the decisions they make.

A Crisis of Public Confidence

In a democracy, legislative representatives are in a paradoxical situation: they must be both followers and leaders at the same time. On many public issues this paradox resolves itself adequately in practice. Either public opinion provides clear guidance which legislators generally follow, or else legislators themselves take the lead in clarifying issues and shaping a public consensus around a particular course of action. However, at least in recent years, this healthy process of mutual learning has not been evident on questions of legislative ethics. An alternatively cynical and outraged public has not given legislators the guidance they need, while, for their part, legislators have not been able to muster sufficient leadership and credibility to quell public uncertainty and suspicion.

Legislators and legislatures are in trouble. They face a crisis of public confidence and a crisis of legitimacy that, if not historically unprecedented, is at least deep and persistent enough to provide ample cause for alarm.[3] In 1966, 42 percent of the respondents in a Harris survey expressed "a great deal of confidence" in Congress. Since then confidence levels have fluctuated within a general downward trend, reaching a low point of 18 percent in 1980.[4]

Public suspicions about the ethical integrity legislators are not the only—or even the most salient—ingredient in this crisis; its causes are far more pervasive and difficult to explain. At bottom, perhaps, the deepest challenge to legislative legitimacy lies in the widespread public perception that legislative institutions are too cumbersome and too vulnerable to the pressure of narrow interests to govern effectively. Whatever its broader causes, however, one facet of the current troubles facing legislators clearly is related to legislative ethics. In 1980, for example, a majority of Americans thought that congressmen as a group were unethical, and 20 percent thought that their own congressman would accept a bribe if offered one.[5] There are similar popular misgivings about state legislators as well.[6]

These findings suggest that even if most legislators are in fact fulfilling their ethical duties, large segments of the American public do not perceive this. Most constituents may trust the ethical integrity of their own elected representatives, but they do not trust legislators as a group. In such a climate, legislators surely need to devote more visible and effective attention to legislative ethics. To restore public confidence, they need to demonstrate that they care about their ethical responsibilities as public servants.

We are deeply concerned about the lack of a productive dialogue between legislators and their constituents on issues of legislative ethics. Public confusion about legislative ethics, sensationalism and innuendo in the press and on the campaign trail, and far too little careful analysis and sound reasoning on all sides combine to produce several serious problems. These conditions send inconsistent messages to legislators and hamper their ability to take steps to deter misconduct and measures to enhance and reinforce individual and institutional integrity. They lead to unfair criticism of individual legislators and to the use of misleading moral rhetoric for political advantage. They also distract public attention from certain practices and structural incentives that have disturbing ethical implications.

Toward a New Dialogue

In the remaining years of the 1980s and beyond, we believe that legislative service will require a renewed sense of ethical duty among legislators and that, as a nation, we must move toward a more comprehensive and constructive public dialogue on legislative ethics. This dialogue should be more constructive in that it should not arise simply as a response to intermittent scandals or focus on blatant examples of ethical misconduct. Instead, it should articulate a national conscience for legislative representation, embracing positive ideals as well as negative prohibitions. And it should be more comprehensive than the current discussions of legislative ethics, which center on conflict of interest, misuse of office for personal gain, and public disclosure requirements. The future dialogue we seek should clarify the underlying moral principles served by these prohibitions and disclosures, and it should move beyond these topics to encompass the ethical goals served by autonomous legislative judgment, democratically accountable representation, and responsible institutional membership within legislative bodies.

. . . as a nation, we must move toward a more comprehensive and constructive dialogue on legislative ethics.

To be effective, this dialogue must be a truly public undertaking; it must include not only elected legislators at both the federal and state levels, but also legislative staff members, lobbyists and other political activists directly involved in the legislative process, officials in executive departments who often influence legislative activity, journalists, and the public at large. All Americans have a stake in the ethically proper conduct of legislative office, and we all have a duty to help create the conditions under which legislators will be able to fulfill their own special obligations to be autonomous, accountable, and responsible.

As a means of providing support and assistance to individual legislators, there should be more discussion of legislative ethics within legislatures. Legislators should not only reflect upon the ethical aspects of their decisions in the privacy of their own consciences, but they should also share their ethical dilemmas with other legislators and seek the counsel of their colleagues and respected legislative leaders. Ideally, legislatures should provide an atmosphere of collegial support and respect where legislators can find positive assistance in reasoning through the moral quandaries that so often arise.

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At the same time, legislative ethics is not something to be discussed only among legislators themselves; nor does it apply only to them. Members of legislative staffs—whose numbers and importance have increased dramatically in recent years—must have a clear understanding of legislative ethics because their conduct immediately affects legislators' ability to fulfill their duties. The same is true for lobbyists, activists, executive branch officials, and others who play a direct role in the legislative process, and whose conduct affects the character of the political representation citizens receive from their legislators. These individuals seek to influence legislative decision making and policy in specific ways, and they often vie with one another to gain access and to press their case effectively. There is nothing inherently improper about this; when properly conducted, this competition to influence legislators is an integral part of an open democratic life in a pluralistic society. But in seeking to sway legislators, these individuals must not lose sight of the fact that the legislative process is—and ought to be—governed by ethical as well as political and procedural rules. Their duty is not limited to promoting the political, economic, or bureaucratic interests they represent as advocates; they also have a duty to protect the ethical integrity of the legislative process. They must recognize moral restraints in their attempt to influence legislation and temper their advocacy if need be so as to support—or at least not compromise—the autonomy, accountability, and responsibility of legislators.

Journalists are also key actors in legislative life, and the way they practice their craft significantly affects the discharge of ethical duties by legislators. In a sense, journalists are "representatives" too; they stand in as the eyes and ears of absent citizens who cannot closely monitor legislative conduct on their own. Legislators realize that being watched by the media is like being watched by their constituents, and they react accordingly. Therefore, journalists are in a strategically important position to affect the ethical conduct of legislators. Searching and thoughtful media coverage can assist legislators in their duty to be autonomous, accountable, and responsible. It can help them resist improper pressures and influences; it can help them receive the cues and feedback accountable representatives must have; and it can help them contribute to the effective functioning of the legislative process. Careless or biased media coverage, however, can equally hinder legislators in the discharge of these duties.[7]

Finally, because we live in a democracy, the public at large must accept its own measure of responsibility for maintaining the ethical integrity of its elected representatives. Constituents affect the state of legislative life through the civic expectations they hold and convey to legislators. These expectations shape the political environment and the cultural ethos within which legislators must fashion courses of action that are both ethically responsible and politically effective. Surely our nation cannot tolerate a state of affairs in which legislators are forced to choose between ethical integrity and political survival. We can ask that they be prepared to risk a loss of popularity and to take politically courageous stands when their ethical duties require them to do so. That is a part of what integrity and leadership mean in political life.[8] But we cannot ask that legislators routinely sacrifice their political futures in order to observe ethical standards to which their constituents pay lip service but are not willing to endorse with their votes. To do so would not only be hopelessly impractical, it would be unfair to legislators and self-defeating for democracy because it would virtually ensure that the most conscientious individuals would not remain in public office.

Ethics and Politics

This last point raises important questions about the relationship between ethical and political considerations in legislative life. Where does politics end and ethics begin? Some would argue that no realistic purpose is served by discussions of legislative ethics because legislators do—and must—respond single-mindedly to political pressures. According to the conventional wisdom, when push comes to shove legislators will not be moved by considerations of ethical duty but will inevitably act instead on the basis of feasibility and advantage. At the opposite extreme, some of the moral criticism leveled at legislators today is animated by an underlying hostility toward politics and politicians generally. Those who adopt this viewpoint understand that political life involves compromises, bargaining, and a willingness to forgo the ideal in order to achieve the possible. But they view these aspects of legislative politics as ethically dangerous at best or ethically corrupting at worst.

Neither of these perspectives is adequate. Both are based on the mistaken premise that ethics and politics are antithetical to one another. The first banishes ethical discourse from legislative life and tolerates a high-speed pursuit of political self-interest without moral brakes. The second makes ethical obligations into a strait jacket and allows legislators no morally acceptable room for political compromise and maneuver.

Our approach to the ethics of legislative life seeks to chart a middle course between these two extremes. There are tensions between legislative ethics and legislative politics, to be sure. There are times when moral brakes must be applied, times when ethical obligations do constrain political options. But these tensions do not tell the whole story. Political and ethical considerations can also supplement and mutually support one another. Legislators who have a clear sense of their ethical obligations and who know when to apply their moral brakes are usually more effective representatives and lawmakers than those who are Machiavellian "realists." And the practice of legislative politics as the art of the possible is an ethically legitimate calling, which serves the public interest more often than not.

Thus, to emphasize the evaluation of legislative conduct from a moral point of view, or to seek ways to reinforce the ethical integrity of that conduct is neither to adopt an antipolitical stance nor to disregard the value of the political world legislators inhabit. We believe that the ethical scrutiny of legislative life should be based on a thoughtful, balanced appraisal of the opportunities as well as the limitations that political realities create.

One way of doing this is to analyze carefully the perceived tensions and dilemmas to show that in some cases that perception is mistaken because it rests on a misunderstanding of what ethical integrity requires or a miscalculation of what political effectiveness demands. Another is to call attention to the many ways in which politically effective representation—and indeed the political self-interest of individual legislators—is enhanced by, or even depends upon, ethically responsible conduct. Legislators who are blind to the ethical obligations of their role or who carelessly disregard those obligations in venal or otherwise self-serving ways do sooner or later lose the respect of their colleagues and the trust of their supporters. Having lost that respect and trust, they lose their political effectiveness and influence as well.

It is no less important to understand the current institutional pressures and political forces that tend to increase the tension between ethics and politics and from there to seek to devise countervailing measures to mitigate these pressures. A broad array of such measures has been undertaken in recent years, such as disclosure requirements, ethics codes, committees, and commissions; and others, such as further campaign finance reform, changes in the way campaigns are conducted, and moves to reform the internal functioning of legislative bodies are presently being debated. Whatever the merit of particular reforms, none of them will work well unless standing behind them is a broader movement in our political culture toward a more thoughtful and discriminating understanding of the ethical duties legislators ought to fulfill. Whether legislative ethics and legislative politics reinforce one another or conflict in any given political system is a function of the demands legislators place on themselves and the expectations citizens have about their representatives. An important and ultimately quite concrete and practical purpose is served by beginning a new and much broader public dialogue about legislative ethics among legislators, among commentators, educators, and journalists who influence public opinion, and among the citizenry as a whole.

For these reasons we do not begin with a bill of indictments against legislators or with simple solutions for reform. Those seeking ethical panaceas or rationalizations for their own cynicism about legislative morality will not find them here. Like other Americans we are distressed by the instances of legislative misconduct that have been uncovered in the last decade, but we do not start with the assumption that corruption is widespread. On the contrary, we suspect that the vast majority of legislators are dedicated and conscientious public servants, men and women who share a principled commitment to high standards of conduct in the performance of their official duties. Too often in the past, discussions of legislative ethics have been cast in an accusatory and adversarial spirit. Such discussions have placed even conscientious legislators on the defensive. Accurate exposés serve a useful function in directing public attention to specific abuses, but they do not encourage the sober moral reflection and analysis that we feel is needed. More to the point, critical exposés rarely take the trouble to spell out the grounds on which the conduct they condemn should reasonably be judged unethical.

Too often . . . discussions of legislative ethics have been cast in an accusatory and adversarial spirit.

Perspective and Aims

It is necessary to put the various criticisms that have been leveled at legislators recently into clearer perspective, and to distinguish those criticisms that are based on valid *ethical* concerns from those based on ideological or partisan disagreements. Doing so requires a secure philosophical grasp of the underlying ethical principles which define the moral dimensions of the legislator's and representative's role and an understanding of moral complexities and dilemmas that legislators face.

We do not pretend to eliminate ethical complexity or uncertainty, for they are endemic to legislative life. We do hope, however, to provide a perspective in which the ethical complexity of legislative activity can be seen more clearly, and we hope thereby to facilitate legislators' ability to decide upon reasonable, defensible courses of action in the face of that complexity.

Our approach to legislative ethics will be broadly as well as positively conceived. Most often we shall speak of "legislators" and "legislatures" generically so as to include both federal and state officials and institutions. To be sure, there are important differences between the U.S. Senate and the House of Representatives, between Congress and state legislatures, and among the fifty state legislatures themselves; and we shall take account of these differences whenever they are germane to our analysis. In general, though, we believe that all legislators and legislative bodies, however diverse their traditions, functions, authority, or resources, share many common ethical challenges and responsibilities.[9] We reject the notion that different ethics apply to different levels of our federal system or to different states.

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We define the concept of "ethics" broadly to apply not only to individual corruption, conflict of interest, and the use of office for personal financial gain, but also to the entire range of "normal" legislative activities and decisions. The latter bear on a legislator's duty to promote the public good, to represent the legitimate interests of constituents, to exercise autonomous legislative judgment, to maintain the proper constitutional functioning of legislative institutions, and to treat other individuals with justice, beneficence, and respect. By definition, ethics focuses on questions of right and wrong, good and evil, benefit and harm. These questions arise whenever an individual or group exercises power over others, and ethical conduct is required to transform effective power into legitimate authority. In legislative life, the exercise of power is ubiquitous and necessary; hence, ethical issues are pervasive and unavoidable.

Following from this broad conception of legislative ethics, this report has two principal aims:

- *We offer an analysis of the ethical principles that ought to govern legislative conduct in all of its facets.*

The fundamental principles we identify—autonomy, accountability, and responsibility—can serve as the foundation or rationale for specific standards of conduct for individual legislatures and for specific criteria to guide institutional reform within legislatures.

- *We analyze those current structural conditions in the legislative environment that serve to help or hinder the legislator's ability to fulfill the general principles of legislative ethics in specific legislative and representational conduct.*

The study of legislative ethics it not limited to questions of individual virtue, character, and integrity; it also involves a consideration of the system of incentives—rewards and punishments—that shape legislative behavior. When instituted, codes of ethics and enforcement mechanisms become one element of this incentive system. But it is questionable whether they are sufficient to offset other incentives in the legislator's environment that pull in different directions. The dictates of individual conscience and a reasoned commitment to ethical principles also serve, with or without written codes, as important shapers of conduct, but they too can often be overwhelmed by other incentives and pressures. Therefore, there must be several different but mutually reinforcing factors working to support the ethical integrity of legislators—informal moral traditions, formal ethics regulations, political incentives in the legislative process and the electoral system, and finally legislators' own personal commitment to live up to their ethical obligations.

The problems that raise moral considerations in legislative life are of two different types. There are instances where the activity in question is clearly unethical (e.g., taking a bribe in return for a legislative favor) and the problem is how to prevent that act. Problems of this type—which may be called *problems of regulation*—do not involve any serious conceptual or value quandaries, although they do often raise difficult practical issues concerning effective and just methods of deterrence and enforcement. On the other hand, ethical problems may arise that do involve serious quandaries. Individuals already motivated to do the right thing cannot always know what the right thing to do is. In these cases—which may be called *dilemmas of obligation*—reasonable persons may disagree about the appropriate course of action in a given circumstance, important moral principles may require mutually exclusive courses of action, and the ethical decision maker has to choose the lesser of two evils.

Here the problem is not how to deter or punish wrongdoing, but how to assist conscientious individuals in making hard choices in the most reasonable and well-informed way.

Most current discussions of legislative ethics, including the discussions of the recently enacted ethics codes and regulatory rules in Congress and the states, have concentrated almost exclusively on ethical problems of the first type, problems of regulation. This is because, for the most part, these regulations have been designed chiefly to combat one overriding ethical abuse by legislators: the use of office for personal financial gain. Corruption in this sense poses no genuine moral dilemma for the individual legislator. The problems it raises pertain instead to the construction of an appropriate regulatory and enforcement system. How can we guard against corruption, or the appearance of corruption, by restricting the receipt of honoraria or the earning of outside professional income without unduly restricting the personal liberty of legislators, or (at the state level) without destroying the tradition of the part-time or "citizen legislator"? How can we deter corruption or the appearance of corruption by requiring public financial disclosure without unduly violating the legislator's right to privacy or without discouraging qualified individuals from entering legislative service?

By examining the basic principles of legislative ethics, we hope to bring out the rationale behind these and other attempts to prevent legislative corruption, and to suggest ways in which the tradeoffs involved in these regulatory problems can be weighed. In addition, by considering the ways in which these principles can conflict with one another and by considering the ways the conduct prescribed by them may be unclear in particular situations, we can move beyond problems of regulation and take up the even more subtle and nuanced questions posed by dilemmas of obligation.

II. The Ethical Challenge of Legislative Service

Legislative life is a complex of multifaceted ideals, practices, conventions, and traditions. It is perhaps the closest thing we have in modern society to the fully active political life, the *bios politikos,* which classical political theorists had in mind when they defined democratic citizenship (governance by assembly) as the medium through which human beings could realize the full moral potential of their humanity.[10]

Those who have experienced modern legislative life firsthand know well that it regularly falls short of this lofty ideal. They know its ambiguities, its compromises, its frustrations, and its limitations. They know how the time pressures, the political commitments, and the uncertainties of legislative life can spread one thin and grind one down, intellectually, emotionally, spiritually. But they also know its successes, rewards, and the satisfaction that comes not simply from extraordinary power and prestige, but from the realization that one has made a positive contribution to the well-being of others. For all its shortcomings and its seamy underside, legislative life still contains echoes of the classical ideal. Legislators are the modern versions of classical citizens. The rest of us, who exercise a different kind of private citizenship, vicariously remain connected to the humanizing medium of public citizenship through our legislative representatives. They give, so to speak, voice and shape to our civic selves.

When a private citizen steps into the role of legislator, he or she takes on a second ethical identity, one composed of a structure of special obligations that are often more demanding and restrictive than the general moral obligations of private life. To assume the role of legislator is to make a special promise to the rest of us and to accept a special trust on our behalf.[11]

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What, precisely, is the content of that trust; what functions are legislators and legislatures expected to perform? How has its meaning changed over time? What ethical and legislative norms have served it in the past? How have recent electoral and institutional changes affected those traditional norms? Do the formal ethics reforms of the 1970s adequately address the ethical dilemmas legislators now face?

Legislatures and Legislators in a Democratic Society

At both the federal and the state levels, legislative bodies are entrusted with such wide-ranging power and authority that their decisions directly touch the lives of every American. As our society has grown more complex, its public needs more urgent, and its problems more difficult to solve, governmental responsibilities in general and legislative responsibilities in particular have also grown more demanding. Today nearly every facet of social and economic life depends on the effective and judicious functioning of the legislative process. We rely on legislatures to sift and balance conflicting interests, fashioning just and equitable compromises among them for the enhancement of the common good. We rely on legislatures to contain those forces that tend to pull us apart and to nourish those forces that tend to pull us together. In a world of interdependence and technological complexity, we look to legislatures to devise the rules of our collective activity, to guide the allocation of our social and economic resources, and, most fundamentally, to help channel the enormous energy and creativity of our people and our civilization toward productive, just, and humane ends. Finally, we turn to our legislative institutions for leadership and vision, not as a subservient people dependent on a paternalistic elite, but as a free citizenry that has chosen to articulate its common voice through its legislative assemblies.

These are heavy demands to place on any institution and on any group of fallible human beings. No doubt legislatures and legislators often fail to meet them fully. Unwise and even unjust laws are sometimes passed, special interests sometimes prevail, legislative politics sometimes divides rather than unifies, and legislatures sometimes seem to express a babble of contending dialects rather than the voice of the people. And yet the vitality and integrity of our legislative bodies has always remained the most reliable benchmark of the health of our polity as a whole.

Legislatures—the institutions that we expect to perform all these difficult tasks—are peculiar organizations. Perhaps no other institutions are so vulnerable to externally induced change; no other institutions must endure such a significant turnover in their membership every two, four, or six years and still retain stable institutional continuity. In no other institutions are the individuals who constitute the organization so externally oriented and so little dependent on the internal dictates of the institution for their continued status and success. Like the broader society that must sustain its traditions over time by socializing each new generation, legislatures must continually socialize their endlessly arriving new members, but at a vastly compressed and accelerated rate. Older legislators must adjust to their new colleagues who bring new interests, ambitions, and philosophies with them and thus inject an element of uncertainty and unpredictability into legislative relationships. Legislators live by a political clock set long ago by the framers of our federal and state constitutions: every two years much that was solid melts into air—leadership positions are subject to change, new committee assignments are made, last year's coalitions dissolve and new ones form. The processes of initiation, learning, readjustment and accommodation—these are the rhythms of legislative careers. Legislatures must somehow combine the flexibility to permit these kaleidoscopic processes to go on with the overarching stability and continuity to ensure that it can perform the demanding task of legislative governance.[12]

It is the American democratic tradition itself that has molded legislatures into their peculiar sociological shape and has forced them to become such protean, dynamic, and "anti-institutional" institutions. That legislatures often seem so inefficient and disjointed in their operations should not really surprise us. The intriguing question is why they in fact do work so remarkably well. Moreover, if the democratic tradition has made paradoxical demands on legislatures, so that they would remain accountable and responsive to popular demands, it has also created a Janus-faced role for legislators as democratic representatives. This role demands both an external and an internal orientation.

As lawmakers who govern, legislators must be attentive to the internal requirements of the legislative process and the overall public impact of the policies, goals, and values they pursue. As representatives who give voice to the interests of a geographical constituency in the governmental process, legislators must be attentive to the particular needs, claims, and preferences of the individuals and groups that comprise their districts.[13] Combining these two orientations is never easy; sometimes it is impossible. Across the broad spectrum of decisions that legislators have to make—decisions about how to allocate their time, energy, and resources, decisions about whom to listen to most closely in the constant chorus of competing demands and claims, decisions about how to vote on particular bills and why—the need to balance these two orientations is one of the primary sources of the ethical dilemmas that legislators face.

Traditional Norms of Legislative Ethics

Until 1968, when the United States Senate and House first incorporated a few basic ethics provisions into their standing rules, and the 1970s, when revised congressional codes of ethics were adopted and some state legislatures also began developing ethics provisions, legislators had few formal ethics regulations to guide them. Throughout most of American history legislatures have been reluctant to discipline members for ethical offenses, preferring instead to see the voters weed out blatant corruption at the polls.

The absence of formal standards of conduct, however, does not mean that legislative ethics was ignored in the past. On the contrary, the ethical obligations of legislators have been a perennial topic of discussion and controversy in American politics, and a developing tradition of informal moral norms has gradually taken shape in response to the changing nature and complexity of legislative life.

One important source of these traditional norms has been the specific judgments and rulings made by legislatures in their handling of individual cases of alleged corruption and other forms of improper behavior. Over time legislatures have defined the boundaries of legislative ethics by taking disciplinary action against legislators whose actions violated commonly accepted, informal standards of ethical propriety. As legislative functions have increased and as legislative institutions have grown more complex, these informal standards have slowly changed in response to the changing values of the broader society. Overall, the growth of legislative ethics has been a rather piecemeal process. It is difficult to find a consistent pattern in the application of legislative discipline, and the basic ethical principles justifying the punishment of individual legislators in specific cases have rarely been stated clearly or subjected to careful analysis. The shifting focus of ethical concern and legislative discipline at the federal level indicates how certain informal norms developed and evolved.[14]

Overall, the growth of legislative ethics has been a rather piecemeal process.

Each house of Congress is constitutionally empowered to determine its own internal rules, including ethical standards of conduct, and to punish violations of those rules. The most serious forms of discipline are expulsion—the removal of a seated member, which requires a two-thirds majority vote—and exclusion—the failure to seat an individual who has been elected to Congress. Censure, a kind of ritual shaming in which the presiding officer publicly chastises the offender in the presence of the other members of the chamber, is a less severe form of discipline more commonly used in cases of ethical misconduct. Other forms of punishment include the loss of seniority, loss of committee chairmanship, and official reprimand.

Over time the shifting line between ethically tolerable and intolerable conduct has been drawn on an ad hoc basis in the consideration of specific cases involving legislators charged with various forms of misconduct. Early in the nineteenth century two Senate cases established important parameters for the use of internal legislative discipline. The first, involving Senator John Smith, established that the legislature could act against a suspect member even though legal charges against him had been dropped. The second, involving Senator Timothy Pickering, established that the legislature could use the penalty of censure against a member who violated its standing rules and thereby disrupted the orderly legislative process.

By the 1830s the focus of legislative ethics had centered on the use of legislative position for personal financial gain, and the common practice of members arguing cases in which they had substantial personal or legislative interests before the Supreme Court or other federal agencies. Several scandals between 1830 and 1850 cast a cloud of ethical suspicion over these accepted practices and led to legal reforms in federal claims settlement procedures, including provisions prohibiting congressmen from accepting fees for prosecuting claims before federal agencies.

By the turn of the century, the focus of legislative ethics had been broadened further to include issues of campaign financing and electoral corruption. The rapid expansion of American capitalism after the Civil War had forged strong ties between legislators and powerful corporate interests. Numerous scandals during these years, including the notorious Crédit Mobilier fraud of the 1870s, led to a growing movement for reform. During this period the press also began to play a significant part in the public debate over legislative ethics, as demonstrated by the powerful impact of David Graham Phillips' "Treason of the Senate" series. As it had done in earlier periods, Congress reacted by disciplining a number of legislators charged with specific abuses and by passing general legislation designed to provide systemic reform, e.g., the Tillman Act, which prohibited corporate contributions to federal candidates, provided for public disclosure of campaign finances, and set limits on campaign expenditures by House and Senate candidates.

In the 1950s an increasing number of congressmen began to believe that the traditional modes of ethics regulation were insufficient and that both a written codification of ethical standards and a more formalized, uniform enforcement mechanism were needed. Perhaps the most influential proponent of this view was Senator Paul H. Douglas.[15] In 1951 a subcommittee of the Committee on Labor and Public Welfare, chaired by Douglas, held hearings on a resolution to establish a commission to study governmental ethics. These hearings comprise the first substantial public record on the question of political ethics ever produced by the Senate. In testimony before the Douglas subcommittee, Representative Charles E. Bennett presented a very brief, general, and hortatory Code of Ethics for all government employees. After a few years—a remarkably long time considering the relatively bland nature of its provisions—Congress finally adopted this code. It became, in effect, the first official code of government ethics in American history.

In general, the 1950s was a decade of many new ideas and proposals but little substantive change. From 1957–62, for example, over fifty bills and resolutions pertaining to ethics reform were introduced in Congress, but only one—the 1958 code—was acted on. No new procedures were set up to enforce that code, however, and it formally expired at the end of the Congress that had passed it.

In 1962 the Bobby Baker case brought the problem of ethics reform in the Senate to the surface once again. The Rules and Administration Committee, which conducted the Baker investigation, was beset with partisan controversy and charges of whitewash. In 1968 the Senate wrote into its standing rules a rudimentary code of ethics and set up an ethics committee to enforce it. Troubled by the scandals involving Representative Adam Clayton Powell and others, the House followed suit in 1968 by establishing its own ethics committee and an even broader formal code.

The next important step in the ethics reform process came in 1976 and early 1977 with the work of a House Commission of Administrative Review, led by Representative David Obey, and a Senate Special Committee on Official Conduct chaired by Senator Gaylord Nelson. The Obey Commission's and the Nelson Committee's hearings and reports were the first serious consideration of the problems of governmental ethics to be undertaken since the work of the Douglas subcommittee twenty-five years before. They made recommendations concerning financial disclosure, limitations on outside earned income, gifts, mass mailings, office accounting procedures, and the use of campaign funds—recommendations that became the basis for the new codes of ethics adopted in the Congress in 1977.

Two conclusions may be drawn from the history of Congress's handling of ethics cases. The first is that legislatures cannot (and have not) rely solely on the discretion of individual legislators, the standards of the criminal law, or the judgment of constituents to ensure that appropriate ethical norms are acknowledged and obeyed. Legislatures must assume a collective, institutional role in the regulation of ethical conduct in order to protect themselves, and the vast majority of their members who are ethically conscientious, from the damage done by the unscrupulous few. In addition, legislatures must play an educational role in the creation of new ethical standards and values. When they investigate specific cases and decide upon appropriate disciplinary action, legislatures are rarely in a position to apply clear, preexisting standards in a straightforward way. Instead, they must interpret existing rules in new ways and, in effect, break new moral ground by explicitly proscribing conduct that had been tolerated before.

Legislatures must assume a collective, institutional role in the regulation of ethical conduct . . .

The second lesson is that the definition of an ethical issue in legislative life is relative to the institutional structure and political context within which legislators must function. As the internal organization and the policy responsibilities of Congress grew more complicated in the period between the 1870s and the 1950s, the pressures on congressmen intensified and the social consequences of unethical conduct became more serious. The ethical norms of the 1830s were not adequate to cope with the institutional and political realities of the 1870s, the 1920s, or the post-World War II period. Congress has been forced to adjust, broaden, and institutionalize traditional norms of legislative ethics to respond to the new responsibilities it has assumed in the governance of the nation and to the new political and economic relationships congressmen have developed with individuals and groups in the private sector.

Simply put, the ethical problems of legislative life are not static. They grow and change with the changing social milieu legislators inhabit. The fact that, until the 1970s, the direct mechanisms of legislative ethics regulation and discipline have remained relatively informal and ad hoc suggests that tacit ethical norms have also grown out of, and been supported by, other institutional factors influencing legislative behavior.

In order to understand the way informal ethical norms have constrained legislative behavior in the past, one must consider at least three aspects of legislative life that, on the surface, seem to have little to do with legislative ethics per se. These are: the internal customs or folkways that operate within the legislatures to govern the legislative style and behavior of individual members; the influence that political party organizations have on legislators; and the established ties between legislators and local communities of constituents in their districts.

Recent changes have produced an "entrepreneurial" style of legislative behavior.

These aspects of legislative life are important to an understanding of legislative ethics because they provide the political and institutional guidance legislators draw on to fashion their self-identity as public servants and democratic representatives. In providing political bearings for legislators in carrying out their official duties, they also provide, either explicitly or implicitly, ethical bearings as well. This is not to say that the ethical cues provided by legislative folkways, political parties, and local community standards and values were always the right or philosophically correct ones. But sociologically and psychologically, they have been integral parts of the moral experience of legislators and the moral world of legislative life. Recent changes in the legislative and electoral environments have produced a less institutionally constrained, even freewheeling and "entrepreneurial," style of legislative behavior. For better or worse, the ethical guidance provided by legislative customs, party organizations, and local ties is now more inchoate and tenuous than it has been for at least fifty years.

The Rise of the Entrepreneurial Legislator

Both the Senate and the House, and many of the state legislatures as well, have recently become much more decentralized, fluid, and open institutions. Until well into the 1960s congressional folkways and the rigid seniority system prescribed a long legislative apprenticeship and policy and committee specialization as norms of responsible legislative service.[16] These structures and norms have now largely given way to a more flexible system that permits a much more rapid advancement to key positions of influence in legislative careers.[17] Power once concentrated in the hands of party leaders and committee chairmen has become a good deal more diffuse as party caucuses have taken over functions once controlled by the leadership and the Rules Committees, and as subcommittees have proliferated, giving junior members more influence in the legislative process. These trends have moved faster in Congress than at the state level, but even there a new breed of younger, more restless and ambitious legislators has emerged to push for institutional change in many of the same directions.[18] At a time when formal, written ethics *rules* have become more exacting, informal moral *customs* and mores have become more tenuous.

In the workings of the electoral system many concomitant changes have taken place that also make for a more fluid environment, providing more overt pressures and fewer tacit ethical cues for legislators. Local and state party leaders no longer serve as such powerful gatekeepers for entry into electoral competition. The shift from party conventions to primaries and the more democratic selection of delegates where conventions are still used have weakened the control of party elites over the nomination process. Shifting patterns of campaign finance and the escalation of campaign costs produced by the use of television time and the professionalization of campaign advertising have turned fund-raising into a basic preoccupation of candidates. In this respect, too, legislative candidates—both incumbents and challengers—have become more independent of party influence. They can rely on the media rather than local party workers to reach the voters, and they can—and usually must—mount their own fund-raising efforts to gain contributions from private PACs and from individual donors via direct mail solicitations.

Party leaders are therefore no longer in a position to perpetuate certain ethical norms by subtly selecting among potential candidates on the basis of their purported moral "fitness" to hold office. Making one's way through the party apparatus no longer provides present or would-be legislators with a firm sense of ethical identity. The dynamics of electoral competition have become uncertain, and now nearly all legislators must cultivate their own public image beyond the party label. Again, this trend is more readily apparent at the federal level than in the state legislatures, but at least some of the larger states have become virtually indistinguishable from Congress in this regard.

Finally, the representational relationship between legislators and their constituents has become more complex in recent years. Just as contemporary legislators find fewer clear-cut ethical signals coming from legislative institutions and party processes, they also receive less unambiguous moral guidance from their contacts with constituents. This is a particularly significant development because, as we noted earlier, legislatures have traditionally relied on the electoral process to pass ethical judgment on legislators in lieu of internal ethics regulation and discipline. In order to understand why legislators receive less moral guidance from constituents than they probably did in the past, we need to bear in mind some of the special difficulties legislators now face when they return to their districts.

If they are to serve more than one term, legislators must pay careful attention to their "home style." Once in office, they quickly develop a remarkably intricate—if not always wholly accurate—perception of their districts.[19] These perceptions have several different dimensions. Legislators are keenly aware of the geographic, economic, and cultural divisions that structure their constituencies. They carefully analyze the sources of their political support on a range of issues, dividing constituents or groups mentally into the categories of strong and marginal supporters and strong and marginal opponents. As individuals, they locate their own personal values within the plurality of values held by constituents and come to identify more closely with some sectors of their constituency than with others. They also become familiar with the sociological landscape of their districts. They learn the structure of business, civic, and community organizations, and they develop a sense of whom to listen to in order to get a feel for the public mood and where to go to find the people they want to reach.

A legislator's pattern of relationships with constituents may be thought of as a series of expanding concentric circles. At the center of this pattern are those groups that provide the legislator with his earliest base of support, usually those groups and segments of the community with which he or she is most closely involved before beginning his or her legislative career. Farther out are those groups whose support is more marginal, whose mores and interests the legislator knows less well and identifies with less closely. For ethical as well as political reasons, a legislator must continuously reach out to contact the outer circles of his constituency. Politically this is important because legislators must always try to broaden and solidify the base of their support, attempting to strengthen their hold on marginal supporters and to win over marginal opponents. By doing this they can increase their chances of winning a close election or, equally important, discourage strong candidates from challenging them in the first place. Ethically this is important because legislators have a duty to be in touch with and to represent the interests of *all* their constituents, not just those most closely allied with them. Hence the task of moving outward from relationships with constituents the legislator knows the best, feels most comfortable with, and communicates with most easily, to form relationships with those he or she does not know is an endemic part of the practice of representation.

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This task can be exceedingly difficult or even impossible. Several factors presently at work in many legislative districts throughout the country tend to undermine the kinds of direct relationships with constituents that legislators have traditionally relied on for one important source of the tacit norms informing their ethical sense of self-identity as public servants.

First, the constant geographical mobility of the American population is now changing the composition of a legislator's constituency much more rapidly and frequently than ever before. In some areas this turnover is confronting legislators with a situation akin to constant redistricting. This makes it exceedingly difficult for legislators, especially those who have served for some time and grown accustomed to familiar patterns, to get a fix on their districts and to construct an accurate mental map of the interests, cleavages, and sources of political support or opposition to which they must respond. Under these conditions, crafting an effective "home style" has become a good deal more difficult and complicated than it once was.

Second, even if legislators do not have to cope with the rapid turnover in the membership of their districts, many are discovering that it is more difficult to maintain direct links with broad segments of their constituencies. Public spaces where legislators could find and meet voters have shifted and become more impersonal and inaccessible. Older community networks and organizations have broken down. In a world of commuting, dual-career families, suburban shopping malls, and apartment complexes, legislators are finding it more difficult to locate strategic sociological centers where they can easily and efficiently sustain direct, two-way communication with those they represent. Essentially passive, one-way forms of communication, such as television appearances, newsletters, and direct mail, are becoming more prevalent in the "relationships" between legislators and constituents.

Third, many districts are becoming more heterogeneous and pluralistic in their values and cultural attitudes. Again, this makes it more difficult for legislators to sustain a confident feel for the moral pulse of their districts. If many citizens are becoming more detached and alienated from their elected representatives, legislators too are coming to feel alienated from their constituents. Legislators who still represent relatively homogeneous districts can have a sense that there is a definable consensus of values that they can embody and reflect in their conduct of office. They can still receive clear messages and cues from the practice of representation, and when confronted with ethical uncertainty, they have relatively tangible sources of information and feedback to which they can turn. But many legislators can no longer rely on this sort of feedback, and the practice of representation gives them a sense of chaos and peril.

Consequently, the representational relationships between legislators and constituents are beginning to reinforce the anomic, entrepreneurial style of legislative conduct that we have noted in relation to the decentralization of power within legislatures and the decline of party control in the electoral process.

There is no doubt that the elimination of some older constraints imposed by legislative leaders, parties, and district ties has given legislators greater freedom to fashion their public careers in their own way. And in theory, it has given them more freedom to determine their own priorities in fulfilling the range of their ethical obligations as legislators and democratic representatives. But this new freedom has also intensified the ethical challenge of legislative service.[20] At the individual level, it has created a need for legislators to be more self-conscious about the ethical duties attached to their roles. Legislators must now largely rely on the resources of their own moral imaginations—their own personal commitment to ethical standards and their own intellectual capacities for critical judgment, discernment, and reflection—to fill the vacuum left by the breakdown of informal norms. At the institutional level, the new legislative freedom has created a need to find ways to encourage common deliberation about the norms of the legislative system and the ideals to which each legislator should aspire. There is also a need to construct new mechanisms for ensuring ethical accountability and to place explicit, formal standards where tacit, informal norms once were.[21] The ethics reforms of the 1970s took some steps toward meeting that need.

The Limits of Recent Ethics Reforms

To a large extent formalization and accountability were the watchwords of the legislative ethics reform movement in the 1970s. In a remarkably short time this movement led to the tightening of existing conflict of interest prohibitions, the creation of broad financial disclosure requirements, campaign finance reforms, open-meeting or "sunshine" laws, new codes of official conduct that limit the legislator's freedom to capitalize on his office and status for personal or political gain, and the establishment of institutional mechanisms (ethics committees and commissions) to monitor and enforce these regulations. Not since the Progressive era in the early part of this century has such a concerted array of "good government" measures been enacted.

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In the Senate and the House, for example, legislators are required to submit annual financial disclosure forms that list earned income (by category rather than dollar amount) and offer at least a partial profile of the legislator's substantive financial interests. House and Senate rules have done away with most unrecorded floor votes and now require that most committee meetings and mark-up sessions be open to the public, thereby increasing the number of occasions in which legislators must take a public stand on substantive and procedural issues. Campaign finance laws now require public disclosure of congressional campaign contributions and set limits on individual and PAC donations. House and Senate ethics codes limit and require the disclosure of gifts, honoraria, and outside earned income; restrict the private practice of law and other professions where conflicts of interest might arise; prohibit unofficial office accounts and the personal use of campaign contributions; restrict the use of the franking privilege and other official perquisites; and regulate the employment of legislative staff for campaign activities.[22]

At the state level, the regulatory environment is much more diverse and more difficult to describe. Some state ethics regulations are more restrictive than those in force at the federal level; other states still have virtually no ethics regulations at all. Nearly all states have joined Congress in passing campaign financial disclosure requirements; many have also enacted personal financial disclosure requirements and sunshine laws. On the other hand, less than half the states have experimented with regulating the receipt of contributions in state legislative campaigns. State legislative ethics codes, where they exist at all, tend to be weaker than the congressional codes, and they seldom are enforced vigorously by internal ethics committees. However, in a few states, notably California and Florida, independent ethics commissions have been established—usually by ballot initiative rather than legislative enactment—and these commissions generally provide comprehensive monitoring and enforcement of existing rules, including financial disclosure and prohibitions on legislators' representing private clients before state agencies. During the 1970s thirty states adopted new ethics regulations in some form.[23]

Looking at the full range of congressional and state legislative ethics reforms, one can discern two general approaches to legislative ethics. First, far and away the greatest emphasis was placed on public disclosure, a rubric that includes financial disclosure, open meetings, and disclosure of gifts and campaign contributions. The intent here was not to prohibit conflicts of interest in every form, but to give constituents the basic information they presumably need in order to judge for themselves whether unacceptable conflicts of interest are present and to react as they see fit. In theory at least, a comparison of financial disclosure information with a legislator's voting record would enable constituents—or the media and other watchdog groups—to detect sources of unethical bias in a legislator's behavior and to weigh that bias in their electoral decisions. One might well argue that the basic justification for this approach to ethics reform is the principle of democratic accountability. But whatever its theoretical underpinning, it recommended itself as a politically attractive strategy because in some cases it permitted legislators to avoid the difficult task of prescribing their own substantive ethical standards and enforcing them directly. Beyond procedural accountability, the task of determining other substantive principles and standards of legislative ethics was transferred from legislators themselves to individual constituents.

The second general approach to legislative ethics in the 1970s was a marked recourse, in those areas where disclosure alone seemed inadequate, to formal codes and rules. These rules, such as the House and Senate prohibitions on the use of the frank for political purposes, were designed to remedy some very specific, identifiable abuses. They were written in a quite detailed and technical way so that their interpretation and enforcement could become routine. Here again, some understandable and laudable background considerations were at work involving notions of procedural justice and equity. These rules attempt to provide legislators with clear-cut, specific prohibitions that, once stated, can be easily obeyed without imposing undue or unfair burdens on any particular legislator.

In each of these ways legislatures have cautiously entered a new phase of legislative ethics. With the rise of entrepreneurial legislative independence and the waning of many traditional ethical customs and informal regulatory procedures, legislatures have attempted to discourage corruption and other specific forms of unethical conduct. They have tried to restore public confidence by focusing their prohibitions on a rather narrow range of clear-cut ethical issues. Concomitantly, they have used disclosure as a means of throwing open some of the gray areas of legislative ethics to public scrutiny and judgment.

No one should underestimate or lightly dismiss the gains that have been made. Reforms primarily designed to deter conflicts of interest and financial misconduct are particularly hard to evaluate because their positive results are intangible. We cannot know how many unethical activities would have taken place in the absence of these provisions. Yet it does seem clear that the passage of these reforms, together with the discussion and debate that has accompanied them, has made legislators more conscious of their ethical responsibilities. Many casual activities that were once thought very little about have been reexamined and discontinued in the light of considered judgments about the real or apparent ethically questionable implications of those activities. Whatever else they may or may not have accomplished, these recent ethics reforms have undeniably introduced a new circumspection and sense of propriety into the legislative world.

Moreover, like any other instrument of public policy, these ethics reforms are not static entities but dynamic processes. They should be thought of, not as monuments to either our national idealism or misguided zeal, but as ongoing experiments. All the evidence on the success or failure of these experiments is not yet in. Most of these reforms have been in place for less than a decade, and they are undergoing a process of adjustment and fine-tuning as unanticipated problems with their implementation and effects are recognized. We believe that it is important at the present time to permit this process of adjustment to proceed. Some legislators have begun to call for the repeal of many of these reforms and a reliance on financial disclosure alone. This, in our estimation, would be a step in the wrong direction and a serious mistake.

Nonetheless, we believe they constitute only the first step toward a solution to the problems of legislative ethics. By themselves the present reforms are insufficient to meet the ethical challenges of contemporary legislative life. We need to move beyond them and the partial analysis of legislative ethics on which they rest. Taking the next step in legislative ethics involves replacing the cycle of scandal-and-response that characterized the politics of legislative ethics in the 1970s with a more deliberate and sustained public conversation about the broad ethical dimensions of the legislator's role in a democratic society.

The legislative ethics reforms of the 1970s have solved some problems, but they have also created new ones. In some cases they have done more to direct public attention toward examples of legislative corruption than they have done to restore public confidence in legislative integrity. Most important, these reform measures have not served to deepen or to clarify public understanding of legislative ethics in general. They were designed to remedy particular abuses that surfaced in the aftermath of Watergate and subsequent scandals in the mid-seventies. But they are now endangered by the fact that their underlying rationales have neither been clearly understood nor secured in a broader framework of ethical principles.[24]

Public disclosure strategies, such as open meetings and financial disclosure, rest upon a valid ethical principle of democratic

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accountability. But supporters of these strategies have not clearly explained what the principle of accountability does and does not entail and have not examined how the principle of accountability relates to other, equally fundamental principles of legislative ethics. This is more than simply an intellectual shortcoming; it creates real practical difficulties as well. For example, there are serious objections to the workings or effects of the public disclosure strategy. It appears that the press has not understood—or not cared about—the original intent of financial disclosure requirements. Instead of using this information to inform the public about potential conflicts of interest or patterns of bias, the media have concentrated on reporting who the richest legislators are. Hence financial disclosure has not had the practical effect of enhancing public accountability at all. Similarly, in some ways sunshine reforms have made it more difficult for legislators to fashion legislative compromises and have made them more, not less, responsive to special interest groups—precisely the opposite of their original intent. They have enabled lobbyists to more easily and closely monitor the behavior of legislators in committee settings.

A similar analysis can also be applied to the disciplinary rule strategy. The rules in the present codes were originally designed to reflect the legislature's institutional sense of ethical identity. They stand as a public declaration of what the institution stands for and what it expects of its members. But in practice, precisely because these rules do not include positive statements of ethical ideals and aspirations, they have an ethical "leveling-down" rather than "leveling-up" effect. Like other professional ethics codes that are limited in the same way, these codes implicitly suggest that if a legislator has not violated any of their rules, then he or she has done all that legislative ethics requires. Beyond the confines of these rules, legislatures seem to have few valid grounds either to criticize or to praise their members.

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Without a better understanding of the underlying principles of legislative ethics and a more comprehensive appreciation of the full range of ethical issues confronting legislators, it is not at all clear how to respond to objections such as these or how practically to adjust existing ethics reforms so that they can effectively achieve the valid, albeit limited, purposes they were designed to serve. Unless we move beyond these reforms, then, there is a danger of losing the very real benefits they have achieved.

III. Ethical Principles and Legislative Life

The Practice of Representation

The first component of legislative ethics is the set of special ethical obligations that comprise the moral role or *persona* of the legislator. In the American political system, as in all other modern democracies, this role is embedded in—and makes sense only in terms of—the practice of political representation. Consequently, theories of representation provide the starting point for our analysis of legislative ethics in a democracy.

On inspection, however, traditional theories of representation offer less guidance than one might hope. Since the seventeenth century, when representative political institutions first began to emerge in a recognizably modern form in Western European states, political theories have developed two contrasting conceptions of representation: "trustee" theories and "delegate" theories.[25]

According to the trustee theory, election constitutes a broad transfer of authority from the represented to the representatives. On this view, the representative has an almost unlimited license to make legislative decisions based on his or her own moral judgment of the best interests of the represented and the common good of the political community as a whole. The representative's fiduciary obligations to particular constituents are subordinate to more general fiduciary obligations to the public interest. What the representative as trustee owes constituents is simply his or her best effort to shape public policy wisely. The continued support by constituents in subsequent elections amounts primarily to their endorsement of these personal qualities of wisdom and leadership.

The delegate theory, by contrast, emphasizes a considerably more constrained and specific relationship between the representative and the represented. According to this theory, representation involves carrying out a set of express or tacit instructions. Election constitutes a specific and circumscribed transfer of authority, and the representative has a moral duty to make legislative decisions in accordance with the express interests and preferences of the represented. In the delegate theory, unlike the trustee theory, the representative's fiduciary obligations to constituents are paramount; they must not be subordinated to the representative's responsibility to promote the public interest. In other words, the representative's duty is to promote and protect the interests of constituents—as *they* define those interests. On this view, the "public interest" simply is equivalent to the aggregation of specific interests, and can best be served by an adversarial legislative process engaged in by delegates representing competing specific interests. What the representative as delegate owes constituents, then, is strict adherence to their known preferences. Their continued support in subsequent elections amounts primarily to their endorsement, not of qualities of wisdom and leadership, but of the representative's ability to deliver the benefits and protections they desire.

Neither of these theories provides an altogether satisfactory account of the actual practice of representation, and neither provides a normative conception upon which the full range of a legislative representative's ethical obligations could be grounded. Because they are each simplified or abstract models of representation, they sidestep most of the hard questions of legislative ethics. These questions arise precisely because legislators are in reality both trustees and delegates, not by turns, but simultaneously in nearly everything they do.

. . . legislators are in reality both trustees and delegates.

Legislators themselves seem to recognize this. Empirical studies of legislators' own conceptions of their roles have shown that the trustee/delegate dichotomy has very little explanatory force in accounting for legislative behavior.[26] Legislators who consciously label themselves as "trustees" do not act differently from those who label themselves "delegates." Indeed, when asked to identify themselves in these terms, most legislators respond that this distinction has little practical significance. Accordingly, recent normative and descriptive studies of representation have begun to move away from these abstract models and have begun to give us a much more nuanced understanding of aspects of representation that raise ethical issues and create moral dilemmas for legislators.[27]

What should representatives represent? This problem is a good deal more complicated than it at first appears. Interests in our society do not conform to the geographical boundaries of legislative districts, and they do not arise in isolation from the cultural and economic forces at work in different sectors and regions and in the nation as a whole. Therefore, legislators cannot—and should not—try to represent only their own geographical constituencies. Legislators are morally obliged to serve the interests of their geographical constituents, but that is not their only—and sometimes not even their most important—ethical obligation. Moreover, when serving the interests of constituents, representatives do not—and should not—passively respond to preset preferences. Their own activities in the process of representation affect and actively shape these preferences to a certain extent. Most constituents do not know or much care about most of what their representatives do. This creates a zone of indifference on most issues that gives a legislator wide latitude for maneuver. On a given issue, a legislator, using a political calculus that may or may not include ethical considerations, will focus on those individuals or groups who are most vocal and will attempt to accommodate their demands like a delegate, while adopting a trustee-style toward the majority of indifferent constituents. But skillful legislators can also reverse this approach and successfully go against the demands of the intensely interested minority by marshaling support for this stand among the weakly interested or indifferent majority. By the exercise of leadership and initiative, legislators put issues on the public agenda, define options, and in effect write their own instructions (like trustees) which they then carry out (like delegates).

. . . when serving the interests of constituents, representatives do not—and should not—passively respond to preset preferences.

The ethics of representation is also complicated by the fact that representation is a collective process. Not only do individual representatives have many different de facto constituencies, individual citizens also have many different de facto representatives. No individual legislator's practice of representation occurs in isolation but is embedded in a larger system of representation. For example, consider the issue of milk price supports. A congressman from Wisconsin cannot effectively represent dairy farmers in his district without also representing dairy farmers in other districts (in Wisconsin and elsewhere) too. And a dairy farmer in Tennessee may well find his interests better represented by the congressman from Wisconsin (on this issue) than by the Tennessee congressman he votes for. Finally, in the intricate workings of the legislative process, both the dairy farmer from Wisconsin and the one from Tennessee may find that their fortunes turn on the decision of a congressman from Manhattan who is in a position to cast a deciding vote.

These considerations suggest two conclusions about the role of the legislator that are pertinent to legislative ethics: first, the role legislators play is "multidimensional"; and second, it is "system-dependent."

It is multidimensional in that a legislator's overall role—the structure of duties, powers, and prerogatives into which a private individual steps when he assumes public legislative office—is actually composed of many different subroles, orientations, and strategies of political activity or decision making. These subroles can be classified and described in a variety of different ways: according to the functions legislators perform, the styles they adopt in relating to constituents and other legislators, the shifting priorities they give to different interests or segments of their constituencies on different issues, and the substantive positions they take on various policy questions. Commonly used terms such as "delegate," "trustee," "maverick," "insider," "show horse," "work horse," and so on are essentially shorthand labels referring to various ways legislators put together subroles in order to create their own legislative identity and style. None of these various criteria of classification can give us an exhaustive description of these subroles, and no single criterion can normatively prescribe the boundaries of permissible legislative conduct. The point is, simply, that legislators must engage in a perpetual movement between these subroles if they are to function effectively in the legislative and representational process.

Moreover, the overall office (or role) of the legislator and its component subroles are system-dependent, in the sense that the appropriateness of a legislator's decision to play any particular subrole at any given time depends upon what other legislators are doing at that time. Subroles are defined in terms of other contrasting subroles—without "inner-club members" there can be no "mavericks" for example—and their effectiveness depends upon the way they are integrated into the larger system of role playing by other legislators. For this reason, too, no theory of representation—and therefore no principles of legislative ethics—can prescribe a single set of subroles that a legislator must play. To be a "maverick" is no more, or less, ethical than to be an "inner-club member." Each of these legislative styles are necessary and appropriate under certain circumstances. Without the former, legislatures tend to become hidebound and unresponsive to unmet public needs; without the latter, they tend to become fragmented and inefficient. To say that democratic representation is a systemic process is to say that one must not only be concerned with the character or quality of representation provided by an individual legislator but with the nature and extent of representation provided by the legislative system as a whole.

To illustrate this point, consider a decision by Senator Smith to focus on the needs of a relatively small group of people across the country who suffer from rare diseases, and his decision to raise the policy issue of how to encourage pharmaceutical companies to develop and market drugs for the treatment of these diseases. In deciding to take the lead in putting the so-called "orphan drug" problem on the legislative agenda, Senator Smith has added one new subrole to the set that constitutes his overall role—his office—as a legislator. Now, the justification of Smith's decision to do this rests in part on the substance of the problem and the merits of the issue. But it also rests in part on the fact that no other legislators are adequately playing that particular subrole so that, consequently, the legislative system as a whole is not effectively representing the needs and interests of the victims of those diseases. The more general point this example illustrates is that the legislative system should contain a plurality of subroles, a plurality of ways in which legislators allocate their time, attention, and their legislative resources.

How then do these aspects of the representative's role relate to legislative ethics? Amy Gutmann and Dennis Thompson have explained the connection as follows:

> . . . [R]epresentation is not simply a one-to-one relation between constituents and legislators but a collective process involving systematic interaction among many people holding many different roles. It is this pattern of conduct in the representative system as a whole that should ultimately determine our moral and political judgments about legislative ethics. . . . Because legislators must choose among many different roles, and because the rightness of that choice depends on the state of the system in which they make it, legislative ethics cannot specify in advance a particular set of duties for a representative. Legislative ethics cannot tell the representative whether to act as a trustee or delegate even on a given issue, and certainly cannot tell him what position to take on the issue.[28]

In order to understand the ethical obligations of legislators, we must focus not so much on discrete actions by legislators or on their particular role choices but on the *patterns* into which their actions and role choices tend to fall. Most existing discussions of legislative ethics have overlooked this. The tendency is to zero in on a particular action and to ask: "Is this ethical or unethical?" This mode of analysis is appropriate to very clear-cut ethical issues such as financial misconduct, but it cannot serve as a basis for legislative ethics in general. The role choices that legislators must make are simply too diverse and the moral considerations pertinent to those choices cut in too many different directions.

At the same time, because legislators must and do have so much discretion in their choices of representational roles, guiding ethical principles are all the more necessary. These principles recall legislators to the basic democratic purposes they have promised to fulfill and to the reasons why they have been entrusted with political authority in the first place. If the remarkably open-textured nature of legislative life and the practice of representation permits wide discretion in the choice of subroles, the preservation of representative democracy equally demands the ethically right exercise of this discretion. The fundamental principles of legislative ethics govern how that discretion should be exercised and to what ends.

Principles of Legislative Ethics

The legitimacy of the authority a legislator exercises over other citizens ultimately derives from the underlying legitimacy of democracy as a form of government. Accordingly, the fundamental principles of legislative ethics derive from our nation's democratic traditions and from our understanding of the political conditions necessary to sustain the legitimacy and health of the democratic way of life.

Briefly stated, democratic representation requires: (1) that legislators be morally autonomous agents whose decisions are based on informed, unbiased, and uncoerced judgments; (2) that the conduct of legislators in the performance of their official duties be open to public scrutiny and be subject to the periodic renewal of popular consent via elections; and (3) that legislators act in ways that help sustain or improve systems of representation and lawmaking, which are responsive to the legitimate interests of all citizens and to the common good of the nation. The ethical duties of legislators that follow from these fundamental requirements of legitimate democratic representation are based on what we call the principles of autonomy, accountability, and responsibility.

Autonomy

. . . legislators have an obligation to deliberate and decide, free from improper influence.

The principle of autonomy holds that legislators have an obligation to deliberate and decide, free from improper influence. In legislative life it is impossible to ensure that all the decisions legislators make will be wise ones. Legislators, like all other human beings, make mistakes, commit errors of fact and judgment, and have imperfect foresight into the consequences of their actions. But by taking steps to preserve the autonomy of their judgments, they can at least increase the probability that they will judge and decide correctly.

The idea behind the principle of autonomy is the assumption that legislative decision making is less likely to be intelligent and fair if legislators make decisions in an atmosphere of improper influence. The problem raised by the application of this principle in specific situations is to determine what counts as improper influences.

A legislator's duty to act autonomously and to avoid factors that compromise autonomy does not mean that legislators should be isolated from all influences or that they should try to make decisions in some kind of vacuum. Isolating legislators from all influences would be both unworkable and unacceptable from a democratic point of view. Democratic representation clearly requires that legislators remain open to many kinds of outside influence, accessible, and responsive to constituent interests and the public interest.

One cannot simply rule out, on ethical grounds, all considerations of self-interest by legislators.

These democratic requirements themselves provide the criterion that enables one to draw the line between proper and improper influences on legislators. Improper influences are ones that tend to distract legislators from their basic democratic responsibilities. They draw legislators' use of the authority and resources of their office away from the public ends—the representation of constituent interests and the promotion of the public interest—that these offices were created to serve in the first place.

Defining improper influence in this way helps to resolve the paradox posed by the ethical issue of "conflict of interest" in legislative settings. One cannot simply rule out, on ethical grounds, all considerations of self-interest by legislators. Democratic representation itself inevitably serves to entangle a legislator's own interests with the broader interests held by the members of the various communities he or she represents. When legislators cannot separate the promotion of their constituents' interests from the promotion of their own, that is a sign that democratic politics is functioning as it should. Conflicts of interest arise—as the term implies—when a legislator's personal or political self-interests pull in one direction, and his or her duty to serve broader public interests pulls in another. In this case, considerations of self-interest constitute improper influences, and the legislator has an ethical duty to override them in order to preserve autonomy in decision making.

Since self-interest is such a powerful motivating force in human activities, overriding it is a demanding task. Prudence suggests that the best safeguard against unethical conduct is to avoid conflicts of interest before they arise. Many provisions of the recent codes and ethics regulations in Congress and some state legislatures have followed this prudential approach in areas where personal *financial* self-interest is likely to conflict with the legislator's duty to serve other interests before his own. Prohibitions on the receipt of substantial gifts and other sources of income coming from those seeking special legislative treatment are often viewed merely as restrictions on legislators. For the few corruption-prone legislators this is what they are. But for the majority of conscientious legislators these provisions are best seen, not as restrictions, but as *shields* against the exertion of improper influence by others. Their ethical basis rests on the duties entailed by the principle of autonomy.

If understanding the basis of these code provisions and regulations in this way enables us to see their validity, it also shows their limitation. Financial inducements are an important source of improper influence on legislators, but they are not the only source of such influence. Autonomy is compromised whenever a legislator is led to ignore or override his or her duty to serve the legitimate interests of all constituents and the broader public interest. And the autonomy-based duty to deliberate and decide, free from improper influence, means much more in practice than merely avoiding financial conflicts of interest.

Legislators are required to take stands on issues, and the need finally to vote yes or no on exceedingly complex matters is one of the things that makes legislative service so humanly demanding. In order to preserve their autonomy, legislators must avoid becoming too dependent upon any single source of information or analysis. In their political careers legislators necessarily form close associations with lobbyists, special interest groups, and certain sectors of their district constituencies. But these special associations must not become the exclusive source of a legislator's perspective and outlook, and when they begin to distract a legislator from his or her broader democratic responsibilities as a *public* servant, their influence becomes improper. Legislators who, in the overall pattern of the roles they play, become simply the spokesmen for the narrow interests and objectives of specially favored groups violate the principle of autonomy as seriously as those who dispense legislative favors in return for financial benefits.

. . . legislators have an obligation to provide constituents with the information and understanding they require in order to exercise responsible democratic citizenship.

Accountability

The principle of accountability holds that legislators have an obligation to provide constituents with the information and understanding they require in order to exercise responsible democratic citizenship. Because legislators have wide discretion in their activities, and because no theory of representation or legislative ethics can prescribe all the choices they must make, the ultimate check against improper legislative conduct and the ultimate support for proper legislative conduct must come from the voters themselves. This is the core of the traditional democratic idea that the authority of those who govern rests on the consent of those who are governed. The idea behind the principle of accountability is that legislators themselves ought to take reasonable steps to ensure that democratic consent is fully informed and enlightened.

The principle of accountability is the basis for the various "public disclosure" measures enacted in recent years—financial disclosure, open meeting rules, disclosure of campaign contributions, and the like. At bottom, these measures are designed to enable constituents better to judge whether legislators are fulfilling their duty to preserve their autonomy. But the philosophical justification for the duty that legislators have to comply with these measures comes from their obligation to be accountable. Therefore, the aim of enhancing accountability should guide the enforcement and fine-tuning of these provisions in the future.

The problems of applying the principle of accountability arise in determining what kinds of information are integral to the constituents' exercise of responsible democratic citizenship. Where do we draw the line between what voters do and do not need to know if the outcome of elections is reasonably to be interpreted as an instance of informed democratic consent?

This is not the place to attempt to enumerate a list of the kinds of information constituents should be given. We already live in a comparatively open society, and Americans in general have more access to information about their legislators than voters elsewhere. Still, individual legislators need continually to reassess their own relationship with their constituents from this point of view. They need continually to be on the lookout for significant gaps in the information their constituents possess.

As with autonomy, legislators' personal or political self-interest may or may not be in conflict with their duties of accountability. Legislators are not the only source of information about their activities, but they control the flow of information that reaches constituents through the media and other sources to a significant extent. Political considerations prompt legislators to portray their records in favorable ways and to keep some aspects of their official activities hidden from public view. This is precisely why it is important to affirm ethical considerations that oblige legislators to provide an accurate account of their record so that constituents, and other citizens too, will be in a position to evaluate it in a well-informed way.

The duty of accountability is an ongoing requirement that involves many aspects of a legislator's activities. Constituents need to be able to monitor ongoing legislative activity so that they can provide feedback to legislators concerning needs and interests that have been neglected. Accountability is not simply a burden imposed on legislators by a long democratic tradition that has always been wary of anyone holding a position of political power. It also has a more positive and constructive rationale. When it gives citizens the information and understanding they need to become more thoughtful partners in the process of representation, accountability enables legislators to be more effective representatives—representatives who can provide intellectual and political leadership on important issues and who, at the same time, can benefit and learn from their constituents. Moreover, remaining accountable in this sense helps legislators fulfill their duty to be open-minded, autonomous decision makers. Maintaining a well-informed, alert constituency is one of a legislator's best protections against falling into an ethically dangerous dependence on narrow or biased advice, from whatever source.

. . . citizens need more than factual information; they need a context within which to interpret the significance of the information they receive.

Legislatures promote accountability by publishing a public record of votes, floor debates, and committee proceedings. Financial disclosure requirements have also provided some information about personal and family economic ties and business associations of legislators. The rationale for compliance with these requirements lies in the duty of accountability. Yet citizens need more than factual information; they need a context within which to interpret the significance of the information they receive from legislators. Accountability therefore requires not only that legislators should *disclose* what they have done, but also that they should *explain* what they have done. Too often, disclosure alone does not provide an effective deterrent to unethical conduct. Legislators realize that even if certain information becomes known, its significance will not be understood and its implications will not be perceived. When they are in doubt about what course of action to follow, the principle of accountability recommends that legislators ask themselves: "Could I publicly justify—give good reasons for—doing this if my constituents were fully informed about and fully understood what I had done?" Simply asking: "Could I get away with this if it were revealed?" is not sufficient.

Actions that enhance accountability and serve its underlying rationales should be, as we have said, a constant, ongoing feature of a legislator's conduct. But the principle of accountability takes on a special significance at election time and during the course of political campaigns. Ideally, campaigns should be a time for critical reflection and creative planning, a time for assessing the successes and failures of the past and for looking ahead to new challenges.

During campaigns the interest and attention of constituents is aroused, and legislators have a competitive forum in which to defend and explain their record. When the democratic process is functioning as it should, campaigns can be concentrated periods of civic education.

No one who has followed the course of legislative campaigns closely in recent years can avoid an uneasy sense of how far actual campaigns fall short of this ideal.[29] Legislative campaigns are now more expensive than ever before, and the costs keep rising with each election cycle. But all this money does not seem to have purchased greater understanding—or even better information—for the voters. Media advertising, direct mail, private polling, and other modern campaign techniques seem to be leading us toward a paradoxical situation in which we have enhanced *publicity* but diminished *accountability* for legislators.[30]

It is not surprising, therefore, that numerous proposals designed to improve the conduct of legislative campaigns have been made in the last few years. Some focus on campaign financing regulations; others would change the rules governing the use of paid television time for campaign advertising. California has attempted to curb unethical campaign tactics by instituting a voluntary campaign agreement in which candidates submit copies of direct-mail literature to one another and agree to obey certain guidelines in their advertising.[31]

In assessing the merits of these and other reform proposals, it is important to keep the objectives they ought to serve firmly in mind. Among those objectives, the concept of accountability we have developed here should be given special emphasis. No matter what new campaign regulations eventually evolve, legislators must remember that the way they conduct their campaigns is a litmus test of how seriously they take their ethical obligation to be accountable. Challengers should be alert to the fact that their candidacy has already placed them in the special moral world of legislative life. They too have a duty to be accountable, and the way they conduct their campaign will provide a tangible indication of the ethical integrity they would bring to legislative service.

. . . legislators have an obligation to contribute to the effective institutional functioning of the democratic legislative process.

Responsibility

The principle of responsibility states that legislators have an obligation to contribute to the effective institutional functioning of the democratic legislative process. Representation and lawmaking are collective processes; they rely on the cooperation and coordinated activities of many legislators. Therefore, individual legislators cannot fulfill the ethical obligations of their office or role merely by attending to their own activities and their own relationship with their constituents. They must be concerned as well with the activities of other legislators and with the functioning of the legislature as a whole.

Over time, legislatures have institutionalized various internal procedures and structures designed to facilitate the cooperation and coordination representative lawmaking requires. These arrangements have an ethical as well as a practical importance. Individual legislators will sometimes neglect their duty to represent fairly and completely the legitimate interests of all their constituents. But the legislative system as a whole has been designed to make up for those omissions and to give all persons and groups in our society at least a fair opportunity to have their interests represented and given a hearing in the legislative process. Also, if individual legislators err in their judgment on policy issues and support ill-conceived measures, the legislative system as a whole has historically evolved to compensate for these individual limitations.

Only a small proportion of the bills introduced survive the multiple tests or check points of the legislative process to become law. Those that do have been subjected to a process of amendment and compromise so that, in theory at least, they will reflect the legislature's most deliberate and well-informed collective understanding of what the public interest requires. Hence there is a paradoxical quality inherent in the relationship between individual legislators and the legislative process. In large measure, the legislative process is designed to compensate for, and to mitigate the harmful consequences of, the intellectual, political, and even moral mistakes that individual legislators inevitably make. But like all other structural checks against human fallibility, legislative procedures cannot finally achieve these goals without the active support and cooperation of individual legislators themselves. Recognizing the obligations entailed by the principle of responsibility in the total set of a legislator's ethical duties provides a way of resolving this paradox.

The problems of applying the principle of responsibility arise in determining what the "effective institutional functioning" of the legislature requires in a democracy. As with the duties of autonomy and accountability, the judgments that legislators must make in deciding how best to fulfill the duties they owe to the legislature are often difficult, and there is no simple formula that can make them easier.

Legislators must strike a delicate balance between accommodating themselves to the existing institutional and procedural arrangements of their chamber and pressing for organizational change through public criticism and institutional leadership. The principle of responsibility is not the ethical equivalent of Sam Rayburn's famous adage, "To get along, go along." It does not charge legislators with an obligation to accept uncritically the institutional status quo. But it does require that they direct their efforts to bring about change and legislative reform in the direction of enhancing the democratic character of the legislative process as a whole. At a time when several different kinds of pressures are converging to make individual legislators more entrepreneurial and less institutionally dependent than ever before, the principle of responsibility serves as an ethical caution to legislators against the temptation to use institutional procedures and resources merely as a means to advance their own personal or political ends.

Again, no one would argue that existing institutional arrangements are perfect, either in Congress or in the states. A legislator's responsibility obligations are perfectly compatible with, indeed require, efforts to alter procedures or bring about internal redistributions of power so as to make the legislature more democratically representative. But while legislators do have an obligation to criticize the failings of the legislative process and to reflect in their criticisms the complaints of their constituents, they also have an equally important obligation to provide constituents with a better understanding of the strengths of the legislative process, what they should reasonably expect from it, and the compromises that they would be well-advised to tolerate.[32]

The principle of responsibility adds an important element to our analysis of legislative ethics because it explains one of the features of the ethical duties of legislators that makes them more stringent than the ordinary ethical duties of private citizens. Legislators have a duty, not only to avoid wrongdoing, but also to avoid the *appearance* of wrongdoing. It is, of course, a commonplace of political prudence that legislators must be concerned with their public image as well as their public performance, the appearance as well as the substance of what they do. But to elevate this maxim to the level of ethics, as some provisions in current codes do, strikes some as unfair, since it exposes legislators to moral censure (and sometimes to official censure) even though they may not have committed any substantive wrong. The principle of responsibility suggests why this objection is misplaced, and it provides a basis for those provisions in legislative ethics codes that require legislators to avoid even the appearance of such things as conflict of interest.

The basic idea behind the principle of responsibility, supported by the insight that democratic representation is a collective process, is that the integrity of individual legislators and the integrity of the legislature as a whole are inseparable. Individual legislators cannot effectively represent the interests of their constituents or promote the public interest on their own; they require the support of the legislative process as a whole to accomplish those ends. Similarly, malfeasance, or the public perception of malfeasance, not only discredits the guilty individual, it discredits the legislature and other legislators as a group as well. By performing the role obligations of his or her office badly, an individual legislator can make it much more difficult for other legislators to perform theirs well. Legislatures rightly condemn behavior that casts the assembly into "dishonor and disrepute."

. . . the integrity of individual legislators and the integrity of the legislature as a whole are inseparable.

Ethical Dilemmas

In theory, the obligations of autonomy, accountability, and responsibility are logically consistent with one another, and legislators should be able to fulfill all of these obligations at the same time. Fulfilling the duties of accountability by providing information constituents require in order to exercise responsible democratic citizenship may well put new pressures on legislators, but these will not be improper influences and hence will not compromise a legislator's duty to remain autonomous. Similarly, fulfilling the duty of responsibility by working cooperatively with other legislators to enhance the functioning of the legislative process may well restrict the legislator's freedom of maneuver, but that will not compromise his or her ability to act autonomously or to remain accountable to constituents.

At times, however, ethical dilemmas and conflicts among these principles can and do arise. There is no magic formula for either avoiding or resolving these ethical dilemmas. They are a common, if tragic, fact of everyone's moral experience, but they arise with unusual significance and intensity in legislative life. Codes and regulations can lessen the intensity of these dilemmas in some instances by providing legislators with institutional guidance, but they cannot eliminate them. Individual legislators simply must cope with these dilemmas as best they can by sensitizing themselves to the situations in which they arise and by attempting to analyze, as thoroughly and as thoughtfully as they possibly can, the full range of ethical considerations that should be weighed in deciding how to act.

The topic of legislative ethics could easily be dispensed with if we could assume that, given appropriate background conditions such as full voter participation, complete information, and effective electoral competition, legislators would be motivated to fulfill all of their ethical obligations simply by their desire to be reelected. Some theorists of representative democracy have more or less argued that that is the case. But if it were ever true in any democracy in the past (which we doubt), it is clearly not the case in the United States today. There are at least three features of the current electoral system that pose strong ethical conflicts for legislators by forcing them to choose, more or less severely, between their ethical duties and their political advantage. They are: electoral entrepreneurialism, the campaign finance-lobbying complex, and "homestyle" pressures.

Electoral Entrepreneurialism

First, as we noted earlier, there is the growing phenomenon of electoral entrepreneurialism in legislative activities. This is directly related to the fact that political parties are less influential and are less effective instruments of interest aggregation or electoral coalitions than they once were. Voters are less likely to vote a straight party ticket, and candidates are less likely to rely on the party for campaign funds and manpower. Many districts are less homogeneous than ever before, and television has become a decisive factor in campaigns. Legislative candidates are no longer able to rely on traditional friends-and-neighbors politics and must seek recognition in new ways.

One expert on political parties and Political Action Committees has described what he calls a "monumental change" in the way political influence is organized in American politics:

> American electoral politics has shifted in the last generation or so to a cash economy. Gone is the barter economy of political parties that, especially at the state and local levels, historically depended on contributed labor and the in-house expertise of the party functionaries. Candidates did not commission expensive private pollsters to tap local opinion; they relied on door-to-door canvassing by volunteers or party workers. . . .
>
> In today's politics, however, it is far more common for candidates to organize their own campaigns, assemble their own workers and experts, and raise the considerable amount of cash that these entail. So cash contributors (both individuals and PACs), rather than the parties, now control the essential resources for contesting elections. . . .
>
> Since World War II, there has been an important shift in

> the basic organization or configuration of American political loyalties. In their heyday, the political parties built their organization on a geographical constituency—on the neighborhood or community that was also the local electoral or representative district. But physical and social mobility began to reorient the American voter. . . . The issue constituency of ideological or interest "proximity" has begun to replace the geographical constituency of physical proximity. . . .
>
> So, the single issue or the single configuration of issues is replacing in part the broad, all-encompassing political parties and the new activism is more selective and less partisan. Combined with the decline of the parties' role in campaigns, this new style of politics increasingly produces candidates who, as brokers or political entrepreneurs, organize (with the help of professionals) their own campaigns, assembling the resources and directing their spending.[33]

These new electoral conditions have a direct impact on legislative performance. And they create pressures that cut against many of the ethical obligations we have outlined—particularly duties of accountability and responsibility—creating a potentially dangerous conflict between political self-interest and ethical obligation.

On the campaign trail, and in the information legislators send constituents during the interim periods when de facto campaigning never stops, the electoral environment now provides less support for legislators who conscientiously fulfill their duties of accountability. Since political parties do not provide coherent public philosophies with which legislators might align themselves to garner support, legislators find it difficult to explain and justify their records in anything but ad hoc and idiosyncratic ways. In these circumstances, it is expedient to present one's record selectively and to use newsletters and other direct mail appeals—sent out according to scientifically researched and classified mailing lists—to say different things to different constituents.

Moreover, legislators have devised several different techniques to cope with this free-wheeling electoral environment. For example, legislators often claim credit for projects or programs benefiting their district, whether or not their legislative efforts were actually responsible for the creation of those projects or programs. Legislators also devote considerable staff resources to the tasks of constituent service. Legislators are under pressure to make a name for themselves in some particular policy area and have consequently supported and taken advantage of recent changes in legislative procedures that decentralized policy-making influence by increasing the number and importance of subcommittees. In some ways these changes have made the legislative system more democratically responsive. But together with the electoral pressures that reinforce them, they have also made the legislative environment less supportive of legislative duties of institutional responsibility. Legislators now have fewer incentives to abide by such traditional norms as party loyalty and legislative apprenticeship. The "workhorse" ethic is in danger of extinction when legislators feel that they are on their own electorally and must strive to gain visibility across a range of issues. Unfortunately, this often leads not to careful deliberation and investigative research on policy issues, but to what the political scientist David Mayhew has called "position-taking," i.e., superficial speechmaking and irresponsible bill-introducing that deceives and manipulates constituents.[34]

The "workhorse" ethic is in danger of extinction . . .

The Campaign Finance-Lobbying Complex

The second aspect of the political world of the legislator that creates a tension between political self-interest and ethical duty is campaign financing.[35] Congressional campaigns, and, increasingly, state legislative campaigns as well, have become exceedingly expensive. Television advertising and the professional services now associated with campaigns—consultants, managers, pollsters, and direct mail services—largely account for these costs. More important than the sheer amounts involved, however, is the fact that fund-raising has become the predominant and virtually full-time preoccupation of legislative incumbents who plan to run for reelection. Even legislators from relatively "safe" districts have become caught up in this process for at least two reasons. Raising large war chests is one of the most effective ways for an incumbent to discourage potential opponents. And legislators can form their own Political Action Committees and dispense funds they do not need themselves to other legislators facing strong challenges. This, of course, is a powerful way to gain legislative influence and support that can be used later.

The campaign finance reforms of the 1970s have shifted influence from large, anonymous, individual donors to independent, corporate, and trade association Political Action Committees. PACs influence legislators in many subtle and not so subtle ways. In federal elections they can give up to $10,000 to an individual congressman per election cycle ($5,000 for the primary and $5,000 for the general election). Equally important, they can invest large sums in so-called "independent expenditures" (mainly for negative political advertising) that often benefit (or harm) candidates indirectly. Many observers contend that legal regulations on these expenditures have not been effective.

The problems that this structure of campaign finance raises from an ethical point of view are made clear by the principle of autonomy. If PAC influence were spread evenly throughout the legislative system, and if all legislators could count on a roughly equal amount of support from some group of PACs or another, the situation might not be so problematic. But this does not seem to be the case. PAC contributions flow disproportionately to legislators who occupy strategic positions on key issues. Moreover, many smaller PACs follow the lead of a few highly influential and well-positioned PACs in making their giving decisions. Finally, PAC contributions are especially influential because they can supply large amounts of early and late contributions to campaigns—early contributions that can discourage strong challenges, and late contributions that can provide heavy media advertising in the final weeks and days before the election. These late expenditures can often be a decisive factor in close races.[36]

The problem is far more subtle than the crass buying of votes—what it involves is the buying of access . . .

For these reasons alone, PACs present a concentrated set of influences that tend to make legislators responsive to special groups and interests; more responsive, we believe, than the principle of autonomy suggests they should be. This problem is exacerbated still further by the fact that fund-raising—principally fund-raising from PACs—has been added to the traditional repertoire of influences that legislative lobbyists now use on behalf of their clients. For example, lobbyists often help legislators make contact with potential campaign donors; in some cases lobbyists go even further and actively solicit funds themselves. Traditionally, lobbyists have provided legislators with valuable—if partial and biased—sources of information and have wielded influence by brokering the political support of various groups. In these ways their influence was considerable, and sometimes even excessive, but it did not easily compromise a legislator's autonomy. However, as lobbyists increasingly become the middlemen between legislators and essential sources of campaign funds their influence puts tremendous pressure on legislators to skew their deliberation and decision making in unethical ways. The problem here is far more subtle than the crass buying of votes—what it involves is the buying of access—but that subtlety makes it all the more pernicious.[37]

"Home-Style" Pressures

Electoral entrepreneurialism and the changing system of campaign finance and lobbying are attenuating the traditional connections between legislators and constituents and reshaping the practice of representation. Legislators are now faced with pressure from interstate and intrastate constituencies that directs their attention away from the geographically defined constituencies they formally represent. Their tendency to accommodate the uncompromising demands of intense and well-organized special interest groups, which has always been a problem in American legislative politics, has grown even more pronounced in recent years. Legislators' ties to their districts provide some protection from these pressures. But "home-style" demands—the pressures of forging successful political relationships with geographical constituents—pose special ethical conflicts and dilemmas of their own.

The changing factors making for an effective home style, then, are the third aspect of the contemporary political environment that we would highlight as posing conflicts between political self-interest and ethical obligation. Two current strategies widely employed by legislators are particularly troubling from an ethical point of view. They are "preferential orientation" and the phenomenon of "running for legislature by running against the legislature." The first poses dilemmas related to the legislator's duties of autonomy; the second bears especially on duties of responsibility.

Preferential orientation. As we mentioned earlier, legislators develop complex conceptions of the structure of political support and opposition among their district constituents. Legislators quickly identify those whose support can be lost or won from election to election. Generally speaking, legislators find it politically advantageous to broaden the base of their political support by moving outward from their solid base to embrace increasing numbers of marginal supporters. This situation is not only politically prudent, it seems essential to legitimate and responsive democratic representation. Moreover, it is morally required by a legislator's autonomy-related duty to consider seriously the interests of *all* his constituents, and to accommodate them in a reasonable fashion.

Notice, though, how drastically oversimplified this picture of building constituent support is, especially today. It assumes that identifiable political cleavages are relatively stable over time, that the range of constituent interests and preferences is spread out across a single dimension on particular issues, and that legislators can construct internally consistent supporting coalitions on the basis of their overall record of legislative decisions and constituent services. None of these assumptions really holds in practice. American politics is incredibly fluid and chaotic at the present time.

There is widespread political apathy combined with pockets of intense political activism, often based on unyielding single-issue orientations. Without much support from political parties to mediate their exposure to these swirling political winds, legislators often find themselves unable to move toward the middle to broaden the base of their support. Indeed, they clutch instead to their closest and firmest supporters. They find it difficult to fashion compromises because they cannot find the middle ground on which such compromises could rest.

Under these conditions, legislators are understandably inclined to adopt what might be called a "preferential orientation" toward their closest supporters. It is all too easy for them to over-identify with the interests of one relatively narrow segment of their constituency, to come to regard themselves as the representative of those supporters to whom they owe their reelection rather than as the representative of the district as a whole. And in such a conflict-ridden political environment, they easily come to regard themselves primarily as brokers for the most visible and powerful interest groups that emerge from the body of indifferent voters and from the apathetic mass of nonvoting constituents.

But if this selective orientation is understandable, it is ethically troubling nonetheless. Highly selective influences are, we have suggested, improper influences. By responding to them exclusively, legislators violate their duties to remain autonomous. Legislators may owe their reelection to a majority of their *voting* constituents, but they owe conscientious democratic representation to *all* their constituents, including those who voted against them and those who did not vote at all. Legislators cannot confidently assume that the most visible and powerful interest groups accurately reflect a cross-section of the constituency. And they cannot be content simply to act as a broker for those interests. Legislators must find ways to reach out to communicate with those who are the least visible, the least powerful, and the least well-organized, in spite of the formidable difficulties this presents today.

Legislators must find ways to reach out to those who are the least visible, the least powerful, and the least well-organized.

Running for the legislature by running against the legislature. At a time when public confidence in legislatures as institutions is low, legislators find it politically advantageous to appeal to this antilegislative sentiment and to distance themselves from the performance of the legislature as a whole.

Reflecting on his experience of observing U. S. House members in their districts, Richard Fenno describes this phenomenon clearly:

> Nothing . . . had prepared me to discover that each member of Congress polishes his or her individual reputation at the expense of the institutional reputation of Congress. In explaining what he was doing in Washington, every one of the eighteen House members [whom Fenno traveled with] took the opportunity to picture himself as different from, and better than, most of his fellow members of Congress. None availed himself of the opportunity to educate his constituents about Congress as an institution—not in any way that would "hurt a little." To the contrary, the members' process of differentiating themselves from Congress as a whole only served, directly or indirectly, to downgrade the Congress. . . . Members of Congress run *for* Congress by running *against* Congress. The strategy is ubiquitous, addictive, cost-free, and foolproof. . . . In the short run, everybody plays and nearly everyone wins. Yet the institution bleeds from 435 separate cuts. In the long run, therefore, somebody may lose.[38]

The principle of responsibility indicates the ethically troubling nature of this "ubiquitous, addictive, cost-free, and foolproof" political strategy. Responsible legislators certainly should criticize legislative procedures in an effort to mobilize public support for needed institutional reforms. The ethical justification of that activity is not in question. But running for the legislature by running against the legislature is not an ethically responsible activity and does not have the effect of enhancing the democratically sound functioning of legislatures. If this practice is indeed as prevalent as Fenno claims, then it indicates that many legislators have allowed political expediency to override an important facet of their ethical duties. Instead of capitalizing on the low public confidence in legislatures, and thereby perpetuating it in a vicious downward spiral, responsible legislators should use the considerable resources of their special standing with constituents to create a more enlightened public understanding of the very real strengths that our legislative systems have.

. . . running for the legislature by running against the legislature is not an ethically responsible activity . . .

IV. Legislatures and Legislative Ethics

The Moral Ecology of Legislatures

How can legislatures as institutions create within themselves an organizational ethos and institutional arrangements that will support members in their efforts to fulfill their ethical duties? In our discussion of the principle of responsibility, we argued that legislators have an obligation to support and improve the functioning of the legislative process as a whole, in line with basic democratic values. Now we shall turn the question around and focus on what might be called the "moral ecology" of legislatures—legislative leadership, institutional support and resources, ethical discussion and education, and formal codes of ethics.

Discussions of legislative ethics sometimes suggest that ethical reflection and decision making are essentially individualistic activities that take place in the privacy of legislators' own consciences. Yet there is also an important collective or social dimension to ethical decision making. Legislators, as moral agents, do have to make their own judgments, to be sure. But legislators need not—and should not—live out their moral lives in lonely isolation. Ethical choices should not be made in a social vacuum; they can be embedded in the ethos of a community of peers and woven through a rich fabric of collegial ties. The character of their social and institutional relationships has a substantial effect on the ability of legislators to understand and fulfill the ethical duties of their role.

Earlier we noted indications of an erosion of traditional, informal norms and a trend toward an increasing atomization within many legislative bodies. Legislators receive less institutional guidance than they once did; they are increasingly—but of course not totally—on their own institutionally, politically, and ethically. A burdensome legislative workload and the growing layers of staff that mediate between legislators and their colleagues make it more difficult for legislators to work closely with one another or to form close personal ties. These developments point to problems, inasmuch as they have swept away many of the older, informal systems of ethical norms that legislatures once provided for their members. But these changes present new opportunities and creative possibilities as well. Few would want to return to the dictatorial leadership, powerful ruling cliques, and committee fiefdoms that once dominated Congress and most state legislatures. At the moment legislatures seem to be in a process of transition. As the vacuum left by the passing of older customs and conventions is filled by newly created systems of ethical support, legislatures have an important opportunity to provide their members with institutional incentives and guidance that are based on a new and better understanding of legislative ethics.

This opportunity presents a special challenge to the legislative leaders of both parties. Their role in creating the kind of environment that facilitates the ability of legislators to fulfill their ethical obligations will be crucial. Party caucuses also have an important role to play here, but it is absolutely essential to bear in mind that legislative ethics is a nonpartisan issue. Cooperation among leaders on both sides of the aisle is fundamental to the successful creation of ethics support systems. In Congress, the Senate Select Committee on Ethics and the House Committee on Standards of Official Conduct have taken an important step in this direction by establishing a nonpartisan approach to matters under their jurisdiction. In many states, such as California and Florida, ethics committees and commissions have also followed a nonpartisan approach. All states would do well to follow this example.

. . . legislatures have an important opportunity to provide . . . institutional incentives and guidance based on a better understanding of legislative ethics.

Legislative leaders influence ethical behavior in subtle ways. They lead by example. If they so choose, they can elevate the level of political discourse, set the standard for interaction with special interests, and affect the overall moral tone of the assembly. They can especially influence the behavior of junior members. If an influential committee chairman regularly votes on substantive matters in an area in which he has significant personal financial holdings, junior members of the committee very quickly form an idea of what is permissible legislative behavior. If leaders abuse the legislative process for political reasons in a manner that deprives legitimate interested parties of a voice in policy making, novice legislators come to see the abuse of the process as being ethically as well as politically acceptable. Conversely, if a legislative leader is an ethical role model, if he or she is an embodiment of the maxim that "public office is a public trust," if avoidance of even the appearance of impropriety guides his or her actions, then a decidedly different atmosphere is created.

Legislative leaders can also serve a salutary role as counselors. There is no reason why they should not caution junior members when they detect the beginning of a pattern of questionable conduct. The junior member surely would rather have that point made by an avuncular leader of his or her own party, in the privacy of the legislative cloakroom, than see it in print on page one of the morning papers, as the lead story on the evening news, or as the subject matter of a disciplinary proceeding.[39]

Legislatures can support the autonomy, accountability, and responsibility of their members in more structured ways as well. For example, they can provide institutional resources, such as the Congressional Budget Office, the Congressional Research Service, and policy study groups at the federal level, that facilitate a more detailed and vigorous analysis of policy issues. They can take steps to regulate lobbying activities, and they can reduce legislators' dependence on lobbyists by employing nonpartisan, professional staff.

Legislatures should do more to encourage and support discussion of ethical issues.

Legislatures should do more to encourage and support discussions of ethical issues among legislators. Presentations on general issues of legislative ethics, as well as discussions of the rationales behind the formal codes and regulations, should be incorporated into legislative orientation sessions and training programs conducted by universities and by organizations like the National Conference of State Legislatures. Ethics seminars have been successfully conducted in Congress and in several state legislatures on an ad hoc basis; such seminars should be established in all legislatures on a regular basis.

Legislative Ethics Codes and Enforcement

One of the most visible and influential aspects of the moral ecology of a legislature is its code of ethics.[40] Codes are too often seen as merely negative elements in legislative life—rules and restrictions that exist because legislators are unable to discipline and direct themselves. But codes can and should have a more positive, supportive function. They can express the legislature's own sense of itself as an ethical organization; they can serve as a public declaration of ethical traditions and values that members are dedicated to serve. At a time when legislators are increasingly being called to give a public accounting of their ethical behavior, codes can supply a common point of reference, giving legislators a standard to which they can appeal in defending their performance and giving constituents a standard to which they can refer in evaluating their representatives. As a practical matter, codes can help legislators resist the ethical pressures they face by giving them an excuse to say no to improper influences and illegitimate demands.

For reasons both lofty and lowly, much attention has been paid recently to legislative ethics codes. The lofty reason behind this has been the belief that codes provide a particularly effective means by which to shape behavior and to articulate acceptable standards. A more mundane reason is that it is far easier to devise codes to curb undesirable behavior than to change those structural or institutional conditions that provide the occasion for misuse of public office in the first place. This combination of high and low motives no doubt accounts for the mixed attitude toward codes. A great deal of effort goes into their formulation, they are readily invoked when needed, and yet they are often regarded with skepticism and jaded amusement.

That is not necessarily a bad mixture of attitudes. If it would be a serious mistake to place the entire burden of hope for acceptable behavior on a code, it would probably be no less an error to think that a legislative body can still get by without a written statement of its higher values and the ethical requirements of office. Yet a reform effort that encompassed only an effort to change or improve a code of official conduct would inevitably be inadequate. While a code can be a useful expression of agreed-upon standards and ideals, it should still only be one element in a well-rounded effort to inspire the conduct of legislators as well as to engender trust on the part of the public in those legislators. Nonetheless, the writing of a code and the continuing seriousness with which it is taken will be an important index of the importance given to the ethical conduct of legislators.

Any effort to write a code of ethics must begin with the fundamental question: What ought to be the purpose of a code? Ought a code have as its goal the shaping of behavior, and, specifically, curbing unacceptable behavior? Or ought a code set out aspirational ideals, high hopes only? Or some combination of both? Should a code help to resolve specific moral dilemmas, or should they be left to individual judgment? Ought codes provide guidance only to those directly affected by them, or ought they also to inform the general public about what they can rightfully expect from those covered? Should a code be written in the formal language of the law, or in more ordinary language? Can a code be credible if it does not provide for a specific enforcement mechanism, or are informal peer and public pressures sufficient? Should codes be written and enforced only by legislators themselves, or should there be some public representation in both processes?

That is a long list of questions, and many others could also be asked. There exists no theoretical literature on the writing of legislative codes of ethics, and at best there exists a minimal consensus only on answers to those questions. The 1970s saw a great deal of activity centering on the devising or revising of professional codes of ethics. The American Medical Association, the American Bar Association, the National Association of Social Workers, the American Association for the Advancement of Science, among others, all underwent exercises designed either to devise or to improve upon their codes of ethics, and numerous corporations and other groups have recently done the same.

There were some striking differences among those efforts. At one extreme, the new AMA code, officially called "Principles of Medical Ethics," consists of seven propositions, each no longer than one sentence and each aspirational in character (no enforcement mechanisms are prescribed). At the other extreme, the present code of the ABA is a lengthy, detailed, and highly legal document, which not only sets out in great specificity the expected standards of behavior, but also provides solutions to a number of common dilemmas. The structure of the former ABA code was based on a sharp distinction between "ethical considerations" (ECs) and "disciplinary rules" (DRs). The new ABA code, drafted by the Kutak Commission, does away with that distinction, combining ECs and DRs.

Some professional codes go to considerable lengths to spell out the philosophical and moral foundations on which they rest, while others do so only briefly or not at all. In some fields the code is a central and important document, while in others most practitioners seem unaware of its existence. A few major and traditional professions—the military, education, and the ministry—have no general code of ethics. There is, in brief, no consensus across different fields and professions about the nature, function, and purpose of a code.

Is there a distinction between a code of ethics for a profession and a code for legislators? There is no allusion in the very small literature on codes to that problem. In the American tradition, legislators are not "professionals" in the conventional sense of the term. They may be professional lawyers or accountants or business persons, but as legislators they are citizens' representatives. The federal and state constitutions specify only minimal requirements for legislators, and none of those qualifications turn on the possession of professional credentials. Does that mean, then, that a code for legislators ought to be different from one for professionals? Not necessarily, except in one important respect perhaps, that such a code will not specify formal professional qualifications or specific norms of technical competence, as is the case with most professional codes.

Legislative ethics codes ought to contain both aspirational elements, espoused ideals, and precisely defined rules . . .

Yet legislative codes as presently written at both the federal and state level are in fact different from most existing professional codes. They are generally narrow in scope, short on aspirational statements, and fail to deal with the full range of representative or legislative functions. For reasons not historically clear, there seems to have developed a tradition of legislative codes that limit their scope, the kind of language they use, and their intended impact. It is clear that the states have imitated each other to a considerable extent, but far less clear where the model for the original imitation originated.

The present code of official conduct of the U. S. Senate is typical. It is not preceded by a preamble, is written in formal legal language, and focuses on a narrow range of topics: the acceptance of gifts, outside earned income, financial conflict of interest, unofficial office accounts, foreign travel, use of the franking privilege and Senate mailing and broadcast facilities, political fund activities, and employment practices. In essence, it too narrowly limits the range of "ethics" to financial matters and to the misuse of office for political advantage. It is the task of an ethics committee to supervise the implementation of the code, to issue interpretations on unclear or disputed aspects of the code, and to deal with charges or accusations brought under the code.

We believe that legislative ethics codes ought to contain both aspirational elements, espoused ideals, and precisely defined rules of conduct. That is, to borrow the terminology of the former ABA code, a legislative code should contain the equivalent of both "ethical considerations" and "disciplinary rules." A code that contains only the former will lack bite and the possibility of adequate enforcement. A code that contains only the latter will fail to set high enough standards and will be too narrow in scope. Although there are a number of practical problems involved, the broader and more aspirational aspects of a code should be written with an eye toward quasi-permanence; that is, they should be developed thoughtfully enough so that constant rewriting is not necessary. By contrast, some of the more specific rules and regulations will possibly require frequent revision, and thus ought to be set apart from the more permanent code. The purpose of the more changeable rules and regulations is not only to clarify specific points where necessary, but to make certain that those items that are in principle enforceable are stated in such a way that they can be acted upon.

A legislative code of ethics ought to lay out the moral obligations of individual legislators, and of the legislature as an institution. It should cover the full range of duties and activities of legislators, addressing the collective responsibilities of the legislators as well as the responsibilities of individual legislators.

A code of ethics ought not simply to be a set of assertions. Instead, it should clearly express the philosophical, political, and ethical principles on which it rests. The code should make clear how those undergirding principles are expressed in specific provisions of the code. Individual rules in a code should be well-grounded, should fit together in a coherent way, and should be accompanied by an explanatory rationale. The principles and rules in the code, and the accompanying comments, should express the history of the legislative institution, whether state or federal, and should be expressive of the values that have animated the history of the state, or of the United States.

A legislative code should not be so short and general as to create ambiguity and to invite uncertainty. Nor should it be so detailed and legalistic as to invite its readers to overlook its foundations, its spirit, and its positive aims. A legislative code ought to be easily read and comprehended by legislators, their staff members, other legislative employees, and the general public. An excessively detailed and legalistic code would not effectively serve that important public purpose.

No code of ethics can offer a resolution of all moral dilemmas.

No impression should be conveyed that the code is meant to provide an exact prescription of correct behavior for any and all circumstances. No code of ethics can offer a resolution of all moral dilemmas. In many cases there will be a conflict of duties, and no perfect resolution will be possible. On other occasions, it will be difficult to understand exactly how a principle or rule ought to be applied. Problems of this kind militate against great precision in a code and equally against conveying the illusion of precision. A code of ethics should have as its fundamental goal the general guidance of the behavior of legislators, not the provision of moral solutions to be mechanically applied. Prudence and individual judgment will always be needed.

There are two critical conditions that are bound to affect the understanding and implementation of a code: the way it is created and the way it is enforced. On the first point, it appears to be a long-standing custom at both the state and federal level that codes are devised by legislators for legislators, with practically no public contribution or comment at all. Yet codes of ethics could have considerably more credibility, and possibly be better in their provisions, if the public were invited to comment on them. While the

Constitution provides that the House and Senate establish their own rules and regulations, it does not preclude, much less prohibit, a public role. Former legislators and ordinary citizens could be called upon to help in the devising, modifying, or reforming of codes. The creation of special public commissions to devise or revise codes, a more active participation in hearings on code reforms, and similar procedures, familiar in most other areas of legislative life, would represent significant progress.

As matters now stand, legislators are often their own worst enemies. In response to particular scandals and public outcries, reflexive code revisions and reforms are undertaken. But between those outbursts, nothing much is done at all; and, to make matters worse, various positive actions may be taken that seem self-serving and designed to erode the adopted codes. The most flagrant example of this would be the way in which pay raises or provisions concerning outside honoraria have been adopted in Congress—usually in a hurry, with a minimum of debate, little or no public participation, and a frequent use of unrecorded voice votes. For a group of men and women who go to extraordinary lengths in most of their activities to be sensitive to a public relations viewpoint, it is uncommonly clumsy. That it regularly brings the media down upon them should hardly be a surprise. Only a larger public role, and one more integrally a part of the process, is likely to reduce those avoidable difficulties.

The issue of enforcement is no less important. Legislators and the general public must believe that violations of a code, at least those "disciplinary" and black letter aspects of it, will be promptly, fairly, and effectively enforced. That may not always be easy to accomplish, in great part because of the requirements of due process or because of jurisdictional complications with certain kinds of violations. Nonetheless, the public is far more likely to be tolerant of those complications (and not dismiss them as mere evasions) if there are mechanisms to see that all charges are speedily investigated, that serious charges are pursued with diligence, and that an efficient and expeditious procedure exists for dealing with violations of the code.

Once again, as in the developing or revising of a code, it would be most helpful for legislators to have the services of outside members of the public. Their role could be that of assistance in the development of investigations, in the evaluation of charges, and in the oversight of general procedures. A place for the public as advisors, counselors, and observers of the procedure would not usurp the constitutional prerogatives of legislatures; it would simply be a means of assuring the public that legislatures use acceptable means of enforcement and proceed with due vigor in their utilization.

If legislators could come to see that a code need not be only a potential weapon for criticizing or attacking them, they might be open to possibilities other than those customarily envisioned. It can be, as Charles S. Levy has noted, an "enabling rather than intimidating medium of influence."[41] A code can represent a common standard that can be appealed to by a legislator when he or she justifies an unpopular act of conscientious judgment to colleagues or voters. Put positively, a code can embody a standard that a legislator can legitimately claim to be seeking, and a standard that transcends private values. Put negatively, a code could provide protection to those who might feel compelled to take unpopular stands or to criticize the behavior of their colleagues.

. . . a code can embody a standard that transcends private values.

Legislators will surely not profit from a system where, in the absence of any consensus whatever, the public will invent ad hoc and capricious standards by which to judge them. Legislators often feel unfairly used by the public and by the media. In part that is because they feel they are being judged by standards beyond their control and unreasonable in their substance. There is considerable validity to that reaction. But it is naive to expect anything better if legislators do not take the lead in trying to educate the public about the appropriate standards by which they might more fairly be judged.

V. Legislative Ethics: Taking the Next Steps

Through their codes and other internal arrangements, legislatures can do a great deal to provide a supportive context for ethical decision making by individual legislators. But this issue of contextual support slips beyond the boundaries of legislatures and enters the broader public domain. In this respect, the ethics of legislative life is no different from the politics of legislative life. The moral ethos of the legislature alone is not enough; legislators must also be supported in fulfilling their ethical duties by the moral ethos of the nation as well. It has been said that in a democracy the people get the leaders they deserve. However that may be, we do believe that, in the long run, Americans will get the moral leadership and integrity they are willing to demand and politically endorse.

In the long run, Americans will get the moral leadership and integrity they are willing to demand and politically endorse.

At the beginning of this report we spoke of the tension and the symbiosis that exists between legislative ethics and legislative politics. In the 1980s and beyond, taking the next step toward assuring ethically sound decision making in legislative life will mean taking steps to ease the tensions where they exist and to reinforce the symbiosis wherever possible.

Accomplishing that task will take time and will be difficult. Not because legislators are corrupt or ethically insensitive, but because our society must cope with a political process that forces legislators to face many significant conflicts between the requirements of ethical duty and the dictates of political self-interest. That is not a task that legislators can accomplish on their own. It will require the concerted efforts of many different individuals and groups: (a) those who play a direct role in the legislative and electoral process—legislative staff, lobbyists, party officials, members of the executive branch, campaign consultants, fund raisers, and activists representing interest groups; (b) those who influence public attitudes and opinion—journalists, commentators, and academics; and (c) ordinary citizens who make ultimate judgments about legislative ethics in the voting booth.

We offer a few general proposals concerning the next steps to be taken in legislative ethics. These proposals are meant simply to highlight the basic ethical perspective presented in this report and to target key actors. They are grouped around the general ethical principles we have identified.

Enhancing Autonomy

1. Legislators should remain alert to the fact that they have been entrusted with the protection of the interests of all their constituents and with the promotion of the public interest of the nation as a whole.

Fulfilling this public trust requires a consistent effort to be well informed about policy issues and the substantive merits of legislative proposals and to resist influences and pressures that may bias this independent judgment or cloud legislators' perceptions of the best interests of their constituents.

2. Legislatures should provide the institutional resources legislators need to preserve their well-informed judgment and to resist undue pressure.

   A. Lobbying activities should be carefully regulated to promote a free exchange of views but to prevent unethical or abusive practices.

   B. Professional staff support should be provided to give legislators sources of information and analysis that are independent of organized interest groups or executive agencies.

   C. Legislative leaders and senior members should encourage the development of sound investigative and oversight procedures.

   D. Legislative ethics codes should affirm the duty of autonomy, at least as an ethical ideal, and should limit the receipt of gifts and honoraria and prohibit activities that tend to compromise this duty.

3. Those directly involved in the legislative process should recognize the importance of the legislator's ethical duty to make autonomous judgments and should recognize the ethical importance of their own role in supporting that duty.

   A. There is a fine line between playing political hardball and applying pressure that compromises autonomy—between, that is, legitimate political persuasion and illegitimate political coercion. Those seeking to influence legislators should always be conscious of that line and should not cross it.

B. Lobbyists and those involved with PACs and other campaign finance groups should support responsible controls and regulations designed to prevent abusive practices. They should collectively sanction or publicly disassociate themselves from individuals and groups that violate the norms of ethical lobbying.

C. Interest groups should reassess their practices in light of the obligation to respect legislative autonomy. Simplistic rating systems and other devices that discourage autonomy should be abandoned. (This also pertains to enhancing accountability.)

4. Those influencing public opinion should strive to promote public understanding of and respect for the duty of autonomy.

A. Journalists should expose cases of biased decision making and undue influence where they exist and should not neglect positive coverage of cases where legislative autonomy is exercised.

Enhancing Accountability

5. Legislators should strive to maintain a dialogue with constitutents. They should remain open to constructive feedback from all constituents and exercise educational leadership in helping constituents understand issues.

6. Legislatures should seek new ways to enhance public understanding of the legislative process and the ethical standards they endorse as institutions and expect their members to live up to.

7. Those seeking to influence legislation should provide accurate, detailed, and balanced information about the activity of legislators to the members of groups they represent.

8. Journalists, traditionally the principal guardians of the system of democratic accountability, should strive to ensure that their coverage of legislative activity and their use of the information provided by financial disclosure requirements does in fact contribute to the enhancement of their readers' and viewers' capacity to exercise their rights as citizens.

A. Journalists should work with party leaders and civic groups such as the League of Women Voters to encourage campaign activities that provide a better discussion of public issues.

B. Journalists should expand their coverage of legislative ethics issues to convey the complexity of ethical dilemmas in legislative life. Media coverage should not focus exclusively on scandals or extreme cases of unethical conduct. The public needs to be informed about ethically right decisions as well as ethically wrong ones.

Enhancing Responsibility

9. Legislators should resist the temptation to run for the legislature by running against the legislature.

10. Those seeking to influence the legislative process should recognize their broader responsibility to the public interest in sound, efficient legislative policy making. They should not obstruct legislators in their efforts to enhance the legislature's institutional capacity to exercise its constitutional functions in appropriations, oversight, and other areas.

11. Those influencing public opinion should promote better public understanding of the institutional functioning of legislatures. They should nurture public tolerance of the healthy checks and balances of the legislative process, but they should aiso help to create public support for legislative modernization and reform.

Legislative Ethics Beyond Legislatures

When conflicts between the requirements of ethical duty and the dictates of political self-interest arise, they do so, in part, because of the lack of enlightened public understanding of legislative ethics and the fact that citizens have not given due consideration to the ethical implications of the demands they place upon legislators.

Public concern about legislative ethics is broader than the notion of ethics that commonly arises from discussions of standards of conduct within legislatures and among legislators. Legislators tend to focus on financial conflict of interest issues and ethical corruption narrowly defined. Many citizens, however, are concerned with corruption in a more general sense; namely, the use of legislative power to serve the special interests of the powerful few rather than the common interests of the many. Citizens, in short, are often intuitively sensitive to the spectrum of ethical duties of autonomy, accountability, and responsibility that arise in the practice of legislative representation. This is not surprising since these duties essentially derive from long-standing democratic traditions and values that are deeply ingrained in American political culture. Legislators may have to expand their own conceptual horizons to match the moral sensibility latent in the citizenry.

But if current public understanding of legislative ethics is potentially broad ranging, it is nonetheless inarticulate and unfocused. Citizens are often preoccupied with scandals, and they tend unfairly to judge legislators as a group by reference to the most corrupt individuals. Examples of the most praiseworthy conduct rarely come to public attention; citizens fail to notice the countless ethically conscientious decisions that are made quietly and routinely in the corridors of legislative life.

As educators, as leaders, legislators can place legislative ethics on the public agenda in more productive ways.

Moreover, citizens often do not understand the gray areas of legislative ethics. They lack clearly stated criteria and rationales—which could be provided by legislative ethics codes—with which to evaluate the justifications that legislators offer in defense of their behavior. When legislators feel that they will not be evaluated reasonably and fairly by their constituents, they have little incentive to remain accountable or to offer properly informative explanations for their activities. If communication between legislators and constituents is to be democratically healthy, both parties to the dialogue have an obligation to abide by reasonable standards of discourse.

Finally, citizens generally have a poor understanding of the nature of the legislative process, both its strengths and its weaknesses. They are therefore not fully equipped to place the ethical obligations of legislators in their proper context or to understand the full range of cross-cutting pressures and constraints that shape ethical decision making in practice.

The need for enhanced public understanding of legislative ethics is one important component of the more general problem of fostering responsible citizenship and "democratic literacy." In this report we have called attention to the educational role legislators themselves can play in enhancing public support, not simply for their own record, but for the promotion of ethical conduct by legislators generally. Representation is a dynamic and interactive process. Representatives do not only respond to preset public concerns, they also actively shape those concerns and set agendas for public deliberation. As educators, and as leaders, legislators can use their position and the "working capital" of their constituents' respect for and trust in them to place legislative ethics on the public agenda in more productive ways than they have thus far.

But legislators alone cannot and indeed should not shoulder the burden of public education in this sense. That burden also properly falls on academic educators, and perhaps even more significantly, on journalists, editors, commentators, and editorial writers.

One of the purposes of this report is to prompt further study and discussion of legislative ethics, both in legislatures and in a wide variety of other forums. Political scientists, political theorists, philosophers and other scholars must join in this discussion, lending it their own special expertise and perspective. And journalists must struggle against the tendencies of their industry to appeal to sensationalism and scandal and seek instead to present their readers and viewers with a more informed understanding of legislative life and the ethical dilemmas it poses. Such efforts can prompt legislators to explain their conduct forthrightly, admit their uncertainties and mistakes, and support adequate codes and regulations that will enhance the moral ecology of legislatures.

Only through the cooperative efforts of legislators, scholars, opinion makers, and other concerned citizens will a richer understanding of legislative ethics become a part of that continuing civic conversation that is necessary to sustain a viable and healthy democracy.

Notes

1. Cf. *Revising the United States Senate Code of Ethics. A Hastings Center Report* Special Supplement (Hastings-on-Hudson, N.Y.: The Hastings Center, 1981).

2. Cf. Edmund Beard and Stephen Horn, *Congressional Ethics: The View From The House* (Washington, D.C.: The Brookings Institution, 1975).

3. Lawrence C. Dodd, "Congress, the Constitution, and the Crisis of Legitimation," in *Congress Reconsidered*, 2nd ed., ed. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, D.C.: Congressional Quarterly Press, 1981).

4. ABC News—Harris Survey, November 24, 1980. For a general review of recent data on public attitudes toward Congress, see Roger H. Davidson and Walter J. Oleszek, *Congress and Its Members* (Washington, D.C.: Congressional Quarterly Press, 1981), pp. 151–56. It should be noted that other major institutions in American society have also suffered a marked decline in public confidence since the 1960s.

5. CBS News/*New York Times* poll, February, 1980.

6. Indirect evidence for this is presented in Alan Rosenthal, *Legislative Life: People, Process, and Performance in the States* (New York: Harper and Row, 1981), pp. 46–47.

7. The role of the media in enhancing public understanding of legislative ethics is discussed in detail in Daniel Callahan, William Green, Bruce Jennings, and Martin Linsky, *Congress and the Media: The Ethical Connection* (Hastings-on-Hudson, N.Y.: The Hastings Center, 1985).

8. Throughout this report we shall be concerned with the relationship between the ethical conduct of legislative service and what has been called "transformational leadership." For a full discussion of that notion, see James MacGregor Burns, *Leadership* (New York: Harper & Row, 1978).

9. Cf. L. Richardson Preyer, "Legislative Ethics at the State and Federal Level: A Comparison" in *Representation and Responsibility: Exploring Legislative Ethics*, ed. Bruce Jennings and Daniel Callahan (New York: Plenum Press, forthcoming).

10. For a discussion of this classical ideal, see Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958). For discussions of its application to contemporary representative government, see George Kateb, "The Moral Distinctiveness of Representative Democracy," *Ethics*, vol. 91, no. 3 (April 1981): 357–74; and "Arendt and Representative Democracy," *Salmagundi* 60 (Spring-Summer 1984): 20–59.

11. Cf. Association of the Bar of the City of New York, *Congress and the Public Trust* (New York: Atheneum, 1971).

12. Roger H. Davidson and Walter J. Oleszek, *Congress and Its Members* (Washington, D.C.: Congressional Quarterly Press, 1981).

13. Some of the consequences of this dualistic orientation are discussed in Richard F. Fenno, Jr., *Home Style: House Members in Their Districts* (Boston: Little, Brown, 1978).

14. The analysis in this section is largely based on Richard Allan Baker, "The History of Congressional Ethics," and Roger H. Davidson, "Socialization and Ethics in Congress," both in *Representation and Responsibility*, forthcoming.

15. Cf. Paul H. Douglas, *Ethics in Government* (Cambridge: Harvard University Press, 1952).

16. For detailed studies of these norms and folkways in Congress see Donald R. Matthews, *U.S. Senators and Their World* (Chapel Hill: University of North Carolina Press, 1960); and Richard F. Fenno, Jr., *Congressmen in Committees* (Boston: Little, Brown, 1973).

17. On these and other institutional changes, see Congressional Quarterly, Inc., *Inside Congress*, 2nd ed. (Washington, D.C.: Congressional Quarterly Press, 1979); and Thomas E. Mann and Norman J. Ornstein, eds., *The New Congress* (Washington, D.C.: American Enterprise Institute, 1981).

For more general accounts of the current role of Congress in the federal system, see James L. Sundquist, *The Decline and Resurgence of Congress* (Washington, D.C.: The Brookings Institution, 1981); and Arthur Maass, *Congress and the Common Good* (New York: Basic Books, 1983).

18. Cf. Alan Rosenthal, *Legislative Life: People, Process, and Performance in the States* and Larry Sabato, *Goodbye to Good-Time Charlie: The American Governorship Transformed*, 2nd ed. (Washington, D.C.: Congressional Quarterly Press, 1983), esp. pp. 76–81; 161–82.

19. In this section we have been guided by Richard F. Fenno, Jr., *Home Style*, pp. 1–30 et passim.

20. David E. Price, "Legislative Ethics in the New Congress" in *Representation and Responsibility*, forthcoming.

21. Bruce Jennings, "The Institutionalization of Ethics in the U.S. Senate" in *Revising the United States Senate Code of Ethics*, pp. 5–9.

22. Congressional Quarterly, Inc., *Congressional Ethics*, 2nd ed. (Washington, D.C.: Congressional Quarterly Press, 1980).

23. Robert M. Stern, "Ethics in the States: The Laboratories of Reform," in *Representation and Responsibility*, forthcoming.

24. For various criticisms of recent ethics reforms, see U.S. Congress, Senate Select Committee on Ethics, *Revising the Senate Code of Official Conduct Pursuant to Senate Resolution 109*. Hearings, 96th Cong., 2nd sess. (Washington, D.C.: Government Printing Office, 1981). Cf. also, Joel L. Fleishman, "The Disclosure Model and Its Limitations," in *Revising the United States Senate Code of Ethics*, pp. 15–17.

25. For theoretical discussions of the concept of representation, see Hanna F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972); and J. Roland Pennock and John W. Chapman, eds., *Representation* (New York: Atherton, 1968).

26. Roger H. Davidson, *The Role of the Congressman* (New York: Pegasus, 1968); and Thomas E. Cavanaugh, "Role Orientations of House Members: The Process of Representation," paper delivered at the 1979 Annual Meeting of the American Political Science Association (Washington, D.C.: 1979).

27. Heinz Eulau and Alan Abramowitz, "Recent Research on Congress in a Democratic Perspective," in *The Politics of Representation*, ed. Heinz Eulau and John C. Wahlke (Beverly Hills, Calif.: Sage, 1978), pp. 253–79.

28. "The Theory of Legislative Ethics," in *Representation and Responsibility*, forthcoming.

29. Barbara Hinckley, *Congressional Elections* (Washington, D.C.: Congressional Quarterly Press, 1981).

30. Larry J. Sabato, *The Rise of Political Consultants* (New York: Basic Books, 1981).

31. Thomas Kingsley Houston, "Ethics in Political Campaigns," in *Representation and Responsibility*, forthcoming.

32. David E. Price, "Legislative Ethics in the New Congress."

33. Frank J. Sorauf, "Political Action Committees in American Politics: An Overview," in *What Price PAC's?* (New York: Twentieth Century Fund, 1984), pp. 40–42.

34. David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

35. For further discussion of the issues raised in this section, see: Gary C. Jacobson, "Political Action Committees, Electoral Politics, and Congressional Ethics," in *Representation and Responsibility*, forthcoming, and *Money In Congressional Elections* (New Haven: Yale University Press, 1980). Cf. also, Herbet E. Alexander, ed., *Political Finance* (Beverly Hills, Calif.: Sage, 1979).

36. For further discussions of PACs and campaign finance reform, see Frank J. Sorauf, "Political Action Committees in American Politics: An Overview," in *What Price PAC's?*; Michael J. Malbin, ed., *Parties, Interest Groups, and Campaign Finance Laws* (Washington, D.C.: American Enterprise Institute, 1980); Elizabeth Drew, *Politics and Money:*

The New Road to Corruption (New York: Macmillan, 1983); and Herbert E. Alexander, *Public Funding of Political Campaigns* (Washington, D.C.: Public Affairs Council, 1984).

37. Jay H. Hedlund, "Lobbying and Legislative Ethics," in *Representation and Responsibility*, forthcoming. Cf. also, Kay Lehman Schlozman and John T. Tierney, "More of the Same: Washington Pressure Group Activity in a Decade of Change," *Journal of Politics* vol. 45, no. 2 (May, 1983): 351–77.

38. Fenno, *Home Style*, pp. 164; 168.

39. For a discussion of legislative leaders as ethical role models, see John D. Saxon, "The Scope of Legislative Ethics," in *Representation and Responsibility*, forthcoming.

40. For a further analysis of the issues discussed in this section, see Daniel Callahan, "Legislative Codes of Ethics," in *Representation and Responsibility*, forthcoming.

41. Charles S. Levy, "On the Development of a Code of Ethics," *Social Work* 19 (March 1974): 207.

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